



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. ----

Louisville & Nashville Railroad Company,
Nashville, Chattanooga & St. Louis Railway and
Louisville & Nashville Terminal Company, Appellants,

versus

THE UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
CITY OF NASHVILLE, TRAFFIC BUREAU OF NASHVILLE AND
TENNESSEE CENTRAL RAILROAD COMPANY, - - Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

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No. ----

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versus

THE UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
CITY OF NASHVILLE, TRAFFIC BUREAU OF NASHVILLE AND
TENNESSEE CENTRAL RAILROAD COMPANY, - - Appellees.

APPEAL IN EQUITY FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

RECORD

UNITED STATES OF AMERICA

MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Record of proceedings of the District Court of the United States within and for the Middle District of Tennessee, Nashville Division, in the cause and matter hereinafter stated.

Present: The Hon. John W. Warrington, United States Circuit Judge; Hon. John E. McCall, United States District Judge; and Hon. Edward T. Sanford, United States District Judge.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & St. LOUIS RAILWAY AND LOUISVILLE & NASHVILLE TERMINAL COMPANY, Plaintiffs,

versus

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THE UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
CITY OF NASHVILLE, TRAFFIC BUREAU OF NASHVILLE AND
TENNESSEE CENTRAL RAILROAD COMPANY, - Defendants.

In Equity, No. 30.

This action was commenced on April 2, 1915, and proceeded to final disposition, and during the progress thereof pleadings and papers were filed, process was issued
and returned, and orders and report were made and entered in the order and on the dates hereinafter stated, towit:

On the 2d day of April, 1915, the following petition was filed, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, AND THE LOUISVILLE & NASHVILLE
TERMINAL COMPANY, - - - - Plaintiffs,

versus

United States of America,
Interstate Commerce Commission,
City of Nashville,
Traffic Bureau of Nashville,
Tennessee Central Railroad Company, - Defendants.

PETITION.

To the Honorable the Judges of the District Court of the United States for the Middle District of Tennessee:

Plaintiffs, the Louisville & Nashville Railroad Company, a corporation organized under the laws of the State of Kentucky and a citizen and resident of such State, having its principal place of business in Louisville, in the Western Federal District thereof, and the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Terminal Company, corporations duly organized under the laws of the State of Tennessee, and citizens and residents of such State, each having its principal place of business in Nashville, in said State, in the Middle Federal District thereof, bring this their petition against the United States of America, the Interstate Commerce Commission, the City of Nashville, the Traffic Bureau of Nashville, and the Tennessee Central Railroad Company, the last three of which are corporations organized and existing under the laws of the State of Tennessee, each with its principal place of business in said city of Nashville.

Plaintiffs state that the Louisville & Nashville Railroad Company owns, and for many years has operated, a line of railroad which reaches Nashville, Tenn., from Louisville and other cities on the north, and extends from Nashville to Birmingham, Ala., and other points on the south; that the Nashville, Chattanooga & St. Louis Railway's railroad enters Nashville from the west and extends through the city southeast to Chattanooga, Tenn., and other points and that the only other railroad which serves the city of Nashville is that of the defendant, Tennessee Central Railroad Company, which enters Nashville from the northwest and extends through the

city eastward to Harriman, Tenn.

Plaintiffs state that the Louisville & Nashville Terminal Company owns, partly in fee and partly by lease, a strip of land situated near the center of the city of Nashville upon which the Union Station and other terminal facilities have been constructed, but that all of its said property was leased to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway by lease of June 15, 1896, modified as of December 3, 1902. Said leases are set out in the transcript of evidence hereinafter filed, to which reference is hereby made for a more particular description of its property and the terms of said leases. Said corporations will be referred to herein respectively as Louisville & Nashville, Nashville & Chattanooga, Tennessee Central and the Terminal Co.

Plaintiffs state that on January 17, 1914, defendants, the City of Nashville and the Traffic Bureau of Nashville, filed a complaint with the Interstate Commerce Commission, hereinafter called the Commission, whereby they sought to have said Commission, by its order, require plaintiffs to switch cars of competitive traffic between industries upon their tracks and points of connection with the Tennessee Central, and, in like manner, to require the Tennessee Central to perform the same service for plaintiffs between said points of connection and industries upon its tracks; and in which they also sought to have the non-competitive switching charge of \$3.00 per car reduced to \$2.00, and to have all switching service performed at that rate. A copy of said complaint is filed herewith as a part hereof marked for identity Exhibit A.

Plaintiffs state that they duly filed their separate answers to said complaint, copies of which are filed herewith as parts hereof, marked Exhibits B and C and D, respectively. They state that the Tennessee Central took no real part in the defense of said proceeding and did not participate in the argument, either orally or by brief, so that the contest became one solely between said com-

plainants and these plaintiffs, who were defendants to

said proceeding.

Plaintiffs state that on March 25, 1914, and succeeding days, a formal hearing of said complaint was had in the city of Nashville, at which all the interested parties were represented, when voluminous evidence in the form of oral testimony, maps, contracts, deeds, leases, records and other documents was offered and received. A transcript of all the evidence offered and received in said proceeding, including all exhibits, is filed herewith as part hereof marked Exhibit E. This exhibit is, for convenience, divided into two parts, the first containing all the testimony and documentary exhibits, the second containing all

taining all the maps and blue-prints.

Plaintiffs state that thereafter on February 1, 1915, the Commission made and filed its report in which it held that the defendants, who are plaintiffs here, were guilty of an unjust and unreasonable discrimination in refusing to switch competitive traffic to and from the Tennessee Central Railroad Company, and entered an order requiring plaintiffs to cease and desist, on or before May 1, 1915, and thereafter to abstain, from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central at Nashville, Tenn., on the same terms as interstate noncompetitive traffic, while interchanging, as said report alleged, both kinds of interstate traffic on the same terms with each other; and further ordered plaintiffs to establish on or before May 1, 1915 (subsequently extended to June 1), upon thirty days' notice to the public and said Commission, and thereafter to maintain and apply to the switching of interstate traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, "rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city." A copy of said Commission's report, marked Exhibit F, and of said order, marked Exhibit G, are filed herewith as parts hereof.

Plaintiffs state that since December 3, 1902, plaintiff, Louisville & Nashville Terminal Company, has had no participation direct or indirect in the operation of any terminals or in the switching arrangements between the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, or in any of the matters or subjects referred to in aforesaid complaint, report and order; that it has not been guilty of any of the practices which the order of the Commis-

sion hereinafter mentioned requires it to abstain from; that it is unable to do any of the things which it is required by said order to do; and that the order, and every part thereof, so far as it relates to the said Louisville & Nashville Terminal Company, is arbitrary, illegal and void, and is wholly without evidence of any sort to support the same. Plaintiffs state that references hereinafter to the arrangements and practices between "plaintiffs" relate specifically to those between the plaintiffs, Louisville & Nashville Railroad Company and Nashville,

Chattanooga & St. Louis Railway.

Plaintiffs state that the aforesaid order, as made and filed by the Commission, is illegal, null and void, and that said Commission is without jurisdiction, power or authority in law to make or enforce the same; that it is arbitrary and unsupported by any substantial evidence, and was made because of a mistake of law in the interpretation of the Act to Regulate Commerce, under which act alone the Commission proceeded in making its report and order aforesaid; that said order is in violation of the said Act to Regulate Commerce; that it is impossible of compliance; that it is confiscatory and illegal in requiring the complainants to perform for the Tennessee Central Railroad Company the switching service ordered at the actual cost thereof, exclusive of fixed charges, and without profit; and that it takes plaintiffs' property without due process of law and denies to them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Plaintiffs state that the grounds upon which said order is illegal and void, as set out above, rest in the facts, circumstances and principles of law hereinafter set forth, and as to said facts they state that no evidence whatever controverting them, or any of them, was introduced at said hearing, but that each and all of them are established conclusively and indisputably by the evidence, as fully appears in the transcript hereinbefore filed as a

part of this petition.

The term switching, as used in this and similar cases that have come before the Commission and the courts, is the movement of a loaded car between an industry on the terminal tracks of one railroad and the point of connection with another railroad. Whether it be an outbound car moving from the industry to the point of interchange with the other railroad, or an inbound car moving from the said point of interchange to the industry, the movement is performed by the engine and crew

of the company upon whose tracks the industry is located, and that company is said to switch for the other. If the car originated at, or is destined to, a point reached by the company owning the terminals (either with its own tracks or in conjunction with its connections), and the rate is the same by either route, the traffic is "competitive," as used in the tariffs and by the Commission in this case. Such traffic, which always either originates on, or is destined to, an industry on the tracks of the company owning the terminals, the latter refuses to switch, because to do so would enable its competitor to begin or finish the transportation service, which otherwise it could not render, and thus to obtain the profitable road-haul revenue, while the company owning the terminals would receive only a switching charge. But, by refusing to switch this competitive business, the owning company, being itself able to perform the complete service between origin and destination at the same rate, properly receives the road-haul revenue upon traffic moving to and from industries which enjoy the benefit of a location upon its terminal tracks.

The ground of the objection to switching competitive traffic for a competitor is that the carrier owning the terminals has acquired them at great cost solely as an aid and incident to the performance of this transportation service, and, if their use is thus turned over to a competitor, the owning company is not only deprived of the road-haul revenue to obtain which it acquired these terminals, but it sees a competitor, by the use of its property, enriched to the exact extent of its own money loss, while the public, represented by the shipper, saves nothing, because the same freight charges apply over either line. Nor would the insignificant switching charge deter a competitor from actively soliciting the business of these industries, for it is glad enough to charge the shipper only the transportation rate, thus itself absorbing the insignificant switching charge, in order to get the large road-haul revenue. In this way the competitor, besides sharing the business of the company owning the terminals, would as a quasi-partner, enjoy its terminals upon more favorable terms than the owner itself, as it would get all the benefits of ownership without participating in the original cost or in the continuing expenditures for maintenance, taxes, interest, repairs and other fixed charges.

If, however, the company owning the terminals can not, by itself or its connections, make the complete line haul (as, for example, to a station located exclusively on its competitor's line), that traffic is said to be "non-competitive," as that word is used in this case, and the company owning the terminals freely switches the cars between the industry upon its tracks and the point of interchange with its competitor at the nominal switching charge of \$3.00 per car. This charge for non-competitive switching has been fixed at a nominal figure in order to help the industry by putting it in touch with as many markets, both buying and selling, as possible.

I.

Plaintiffs state that the basis of the Commission's order, that they cease discriminating against the Tennessee Central and switch for it upon the same terms upon which they switch, as the Commission claims, for each other, is the finding in its report that the plaintiffs switch for each other, and hence that their refusal to switch for the Tennessee Central is a discrimination. Such finding of the Commission is thus expressed in its report, at pages 84 and 85 (italics ours):

"Defendants unquestionably interchange traffic with each other and without distinction between competitive and non-competitive traffic. The cars of both roads are moved over the individually owned terminal tracks of the other to and from industries on the other, and both lines are rendered equally available to industries located, exclusively on one. The movement, it is true, is not performed immediately by the road over whose terminal tracks it is performed, but neither is it performed immediately by the road whose cars are moved. It is performed by a joint agent for both roads, and that being so. we are of the opinion that the arrangement is essentially the same as a reciprocal switching arrangement and accordingly constitutes a facility for the interchange of traffic between, and for receiving, forwarding, and delivering property to and from defendants' respective lines, within the meaning of the second paragraph of Section 3 of the Act. The joint maintenance and operation of the tracks utilized in a sense constitutes the terminal tracks of each road the tracks of the other, but inasmuch as both roads contribute nearly the same track mileage and defray the joint expenses in proportion to the number of cars handled for each the arrangement can not

differ materially in ultimate consequences from an arrangement whereby each road performs all switching over its own tracks and interswitches traffic with the other. The Louisville & Nashville contributes 8.10 miles of main and 23.80 miles of side tracks: the Nashville, Chattanooga & St. Louis, 12.15 miles of main and 26.37 miles of side tracks. We can not agree with defendants' contention that they have merely exchanged trackage rights. But even if they have, we think the term 'facility,' as used in Section 3 of the Act, also includes reciprocal trackage rights over terminal tracks, the consequences and advantages to shippers being identical with those accruing from reciprocal switching arrangements. Since defendants interchange traffic with each other they can not refuse to interchange traffic upon substantially the same terms with the Tennessee Central, provided the circumstances and conditions are substantially the same, and defendants are not required 'to give the use of their tracks or terminal facilities' to the Tennessee Central within the meaning of the concluding proviso of Section 3."

Plaintiffs state that the Commission erred in holding that plaintiffs switch for each other and that the arrangement between them is essentially the same as a switching arrangement, because all of the facts, appearing in the record and specifically admitted in the Commission's report, show that the plaintiffs do not switch for each other either competitive or non-competitive traffic, and hence that their failure to switch for the Tennessee Central is not, and can not be, a discrimination against that company. Said uncontroverted facts, briefly stated, are substantially these:

Prior to 1872 the Louisville & Nashville Railroad Company's line into Nashville from the north terminated at a point in the northern part of the city, while its southern line, known as the Nashville & Decatur Railroad, terminated at a point several miles south of the

terminus of this northern line.

Separate terminals were maintained at these two points and the Louisville & Nashville had no tracks of its own within the city connecting them. The only other railroad tracks in Nashville at that time were owned by the Nashville & Chattanooga Railroad and its subsidiary company, the Nashville & Northwestern. The Nashville & Chattanooga was the same railroad as the

present Nashville, Chattanooga & St. Louis Railway, the

name having been changed in 1873.

On May 1, 1872, a contract was entered into between the Nashville & Chattanooga and the Louisville & Nashville whereby, for an agreed rental and certain other considerations (relating to the construction of additional tracks, partly for the Louisville & Nashville and partly for the Nashville & Chattanooga) the Louisville & Nashville acquired trackage rights over the Nashville & Chattanooga's lines through the City of Nashville, including the depot grounds. In 1893, in order to facilitate the construction of a union passenger station and other appurtenant facilities in the central part of the city, the Louisville & Nashville Terminal Company was formed by the plaintiffs. Following its organization the Terminal Company existed in name only until April 27, 1896, when the two constituent companies leased to it all of the property and railroad appurtenances thereon, which the lessors severally owned or controlled within or in the immediate vicinity of the original depot grounds of the Nashville & Chattanooga. The Terminal Company agreed to construct on the premises passenger and freight buildings, tracks and other terminal facilities. thereafter, on June 15, 1896, the Terminal Company leased back to the Louisville & Nashville and the Nashville & Chattanooga jointly all property acquired by it from those companies under the lease of April 27, 1896, together with all other property which the Terminal Company had subsequently acquired, or might thereafter acquire. This lease was made in accordance with the charter of the Terminal Company which expressly authorized it to lease its property and terminal facilities to any railroad company utilizing them upon such terms and for such time as might be agreed upon by the parties. On June 21, 1898, the Terminal Company agreed with the city of Nashville to construct a union passenger station on the premises covered by the leases of April 27 and June 15, 1896, and certain freight stations, platforms, tracks, switches, viaducts, new streets and extension of existing streets in consideration of the city securing the necessary condemnations of land, closing certain streets and erecting approaches to certain of the viaducts to be constructed by the Terminal Company. In previous negotiations the city had required that provision be made in this contract for the admission of future railroads to these terminals, but plaintiffs had refused to build the terminals upon those terms, and when the contract was finally made no provision of that sort was inserted.

further history is thus given in the report of the Commission at page 80:

"The improvements agreed upon were duly made at a cost of approximately \$100,000 to the city and of several million dollars par value of bonds to the terminal company, which bonds were guaranteed by the Louisville & Nashville and Nashville, Chattanooga & St. Louis as authorized by the terminal company's charter, and were used to repay funds advanced by the guarantors to the terminal company and expended by the latter for the construction of the facilities which it had undertaken to construct. Pursuant to this agreement the terminal company constructed a union passenger station, two adjoining freight depots, a roundhouse, some coal chutes, and adjoining yard tracks. The tracks constructed are connected with the tracks of the Louisville & Nashville and of the Nashville, Chattanooga & St. Louis, but not with the tracks of the Tennessee Central. On December 3, 1902, the lease of June 15, 1896, from the terminal company to the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly was modified and in part rescinded. The duration of the lease was reduced from 999 to 99 years, its monetary considerations were modified, and the lessees were reinvested in severalty with their original titles to all the property leased by them to the terminal company, April 27, 1896, except for the intervening lien of the first mortgage for \$3,000,000 which had been given to secure the terminal company's bonds.

"The Louisville & Nashville owns all of the capital stock of the terminal company and 71.776 per cent of the outstanding capital stock of the Nashville, Chattanooga & St. Louis, which it began to acquire in 1880."

In the above-mentioned lease of June 15, 1896, from the Louisville & Nashville Terminal Company to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, in addition to the usual covenants of a lessee there was contained the following, which is therein designated as Article 12, towit:

"Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with said first party, its successors and assigns, that as rent for the premises, or property described in the first article, and for rent of the improvements described in the ninth article as passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures, and main and side railroad tracks, switches, cross-overs, and turn-outs, and other terminal facilities, and all additions thereto and extensions thereof, said second parties, and their respective successors and assigns will pay to said first party, its successors and assigns, annually, in each and every year during the term granted in said first article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth article, and during the term that may be assigned in any assignments of the leases mentioned in the second, third, and seventh articles, a sum equal to interest at four per cent per annum upon the actual cost of all expenditures heretofore made, or to be hereafter made by said first party, its successors and assigns, from time to time, in the purchase, or other acquisition of said premises or property, and in the erection and construction of said improvements, and of all additions thereto, and extensions thereof, and to all taxes, rates, charges, and assessments that may be levied or imposed during the term or terms aforesaid, upon said premises, or property, and said improvements, and all additions thereto, and extensions thereof, and to the cost of such insurance as may be necessary to keep said premises, or property, and said improvements and all additions thereto and extensions thereof, insured to their full value during the term or terms aforesaid.

"On the first day of October in each and every year, during the term or terms aforesaid, the sum which will be due as rent aforesaid for the next succeeding years upon the basis in this article established, shall be ascertained and fixed by the parties hereto; and the sum so ascertained and fixed shall be paid by said second parties, and their respective successors and assigns, to said first party, and its successors and assigns, in equal quarterly payments on the first days of October, January, April and July in the year for which said sum may be so established and fixed."

Plaintiffs state that, as shown in the Commission's report, said mortgage was for \$3,000,000, but that in fact only \$2,535,000 of such bonds were issued, and it is upon that amount that plaintiffs, by said lease, became obligated to, and regularly do, pay the 4% per annum mentioned in said Article 12, as rental for the Terminal Company's property. Plaintiffs state that on December 3, 1902, said lease of June 15, 1896, was modified so as to restore to the said Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the various parcels of property which they had respectively leased to the said Terminal Company on April 27, 1896, subject however, to the lien of the above-described mortgage; but no change was made in Article 12 of the original lease, hereinabove mentioned.

Prior to August 15, 1900, plaintiffs operated their respective terminals independently and switched for each other at the nominal charge of \$2.00 per car, which charge upon competitive traffic was absorbed. On August 15, 1900, which was practically contemporaneous with the completion of the joint terminal facilities above described, plaintiffs, in order to enjoy the joint terminal property (which they had acquired by lease from the Terminal Company, and upon which they had jointly procured the construction of the freight and passenger buildings and appurtenant tracks) and also to provide for the joint maintenance of same and the payment of the annual rental of \$101,400, entered into an agreement which provided for the joint operation of said terminals, through certain joint employes and with equipment contributed a part by each, said joint terminals and the arrangement for operating them through joint employes and equipment being designated, for convenient reference and for the keeping of the accounts of the constituent members, as the "Nashville Terminals."

Furthermore, the principal points of interchange for traffic moving between plaintiffs' lines are on the tracks of the Terminal Company in the center of the city, which necessarily involves some use of the jointly owned facilities in movements between the rails of one company and industries upon the rails of the other; and the Louisville & Nashville, through its long-standing trackage contracts, already had the equal use of some of the Nashville & Chattanooga individually owned tracks. Under these circumstances, for plaintiff to have conducted separate terminal operations for their separately owned tracks, while jointly operating and maintaining their joint terminal facilities, would have been impracticable and im-

provident. Accordingly, in said contract of August 15, 1900, plaintiffs agreed to and did contribute, each to the other, for their joint use through said Nashville Terminals, their joint agency, all of their individually owned tracks within the switching limits of Nashville, except certain freight houses and team tracks, for the term of 99

years from June 15, 1896.

Plaintiffs state that upon the execution of said contract, and at a time when no other railroad was serving Nashville, they organized said joint agency for the ownership, operation and maintenance of all said joint terminal facilities, including the individually owned tracks; that same has been continuously in effect since then to the present time; and that it is the same arrangement which the Commission, in its said report, holds to be a facility which discriminates against the Tennessee Central.

Plaintiffs state that pursuant to this arrangement said "Nashville Terminals" takes charge of all incoming trains (passenger as well as freight), upon arrival, breaks them up, distributes the cars, incidentally places the local cars at the proper industries to which they are destined (but likewise handles all through cars), reverses the process as to outbound trains, freight and passenger, and does all other terminal service whatsoever, including the operation of the Union Depot and its accessories. The cost of this is divided between the two roads monthly upon a wheelage basis, that is, in proportion to the num-

ber of cars handled for each.

Plaintiffs state that by virtue of said contract each acquired and owns trackage rights over the tracks of the other and publishes in its tariffs that it reaches all the industries upon both; and that each does in fact deliver cars to all industries without making any switching charge against the other or the shipper for either competitive or non-competitive business. They say that in law, as well as in fact, each car is handled to the industry to which it is destined, or from which it originates, over a track which the company making the line haul has the legal right to use, and with agencies which said company employs and for such service itself pays; and that the fact of another company having an equal right to the use of said track and operating agency in nowise changes the legal relation of the first named company to the trans-Plaintiffs say that they are simply using their own property and rights acquired by them at great cost, and that their said joint use of their own joint property does not, and can not, constitute a discrimination against a third railroad which has no interest therein. And hence the third railroad can not lawfully be admitted to a participation in the service or the property, which the two roads, in the use of their own joint property, enjoy.

Plaintiffs accordingly state that they do not switch for each other; that they are not guilty of discrimination in refusing to switch for the Tennessee Central; that the finding of the Commission that they do so switch for each other is contrary to the indisputable character of the evidence and unsupported by any evidence, and that the order based thereon is illegal, arbitrary and void.

II.

Plaintiffs state that if the arrangement above described should be held to constitute any sort of switching service rendered by one of the constituent companies to the other, and should be held to constitute some sort of discrimination against the Tennessee Central Railroad Company (both of which propositions plaintiffs deny) such alleged discrimination is not an unreasonable or an unjust one, and is not such as the Act to Regulate Commerce forbids, because the evidence heard by the Commission conclusively and without contradiction shows that the circumstances and conditions are not only not substantially similar (an essential element to unlawful discrimination), but are materially and vitally different. The difference, broadly speaking, is that, in one case, two railroads jointly use their own joint property, and, in the other, would render an independent service with such property for an outsider. The alleged discrimination contemplated by the Act to Regulate Commerce can not exist because of these, among other considerations:

(1) The regular switching service sought for the Tennessee Central involves the movement of a car between an industry upon the track of, say, the Louisville & Nashville to the point of interchange with the Tennessee Central. This movement is necessarily made by the Louisville & Nashville as the Tennessee Central has no right, and is not allowed, to come upon the Louisville &

Nashville terminal tracks with its engine.

In the case of a movement between the same industry and the rails of the Nashville & Chattanooga, the latter owns as great a right to use the Louisville & Nashville terminal track as the Louisville & Nashville does, and it does use it, actually and physically, by sending an engine and crew over said tracks to the Louisville &

Nashville industry to bring the car to its transportation track. The engine and crew are jointly employed, but it is none the less the agency of the Nashville & Chattanooga—and it operates on the Louisville & Nashville track.

(2) The plaintiffs own jointly as lessees a central yard for which, including station facilities, they pay an annual rental of more than one hundred thousand dollars. The trains of each are brought into this central terminal district and there broken up, and the cars are switched to the various industries located either upon these jointly owned central tracks or upon the individually owned, but jointly used, tracks which radiate out from the central

yards.

The Tennessee Central has no interest in this central district and does not connect with in in any way. Its connection with the Nashville & Chattanooga is about two miles from the central terminals and with the Louisville & Nashville it is outside of the city of Nashville. The undisputed evidence shows that it is impossible, therefore, for it to offer its cars for switching to points upon the Louisville & Nashville and the Nashville & Chattanooga, under operating conditions and circumstances substantially similar to those involved in a movement between the Louisville & Nashville and Nashville & Chat-

tanooga.

(3) In the interchange of cars between the Louisville & Nashville and the Nashville & Chattanooga there is, and can be, no uniform nor arbitrary charge for such switching. Under their joint arrangement each pays the exact cost of its use of the joint facilities and agency. This is impossible with respect to switching to or from the point of connection with the Tennessee Central, without admitting the Tennessee Central to said joint operating arrangement upon the same terms. And this is a thing which the Commission is powerless to order, and which, even if it were desirable, plaintiffs would be powerless to enforce without the consent of the Tennessee Central.

(4) The exchange of trackage rights is not, as declared by the Commission, a facility, in the meaning of that word as used in the Act to Regulate Commerce. Nor is there here a mere exchange of such rights. The so-called exchange of rights in the individually owned tracks was a necessary and proper incident to the larger contract for the joint construction and operation of all the terminals, including the union station, depot buildings, team tracks and the joint conduct of all terminal business, including the handling of all passenger and through

freight, as well as the city traffic. Then, too, this is an arrangement between two kindred, not stranger, companies which, though under different managements, are closely allied and properly unite in joint terminal enterprises, because one owns over 71 per cent of the capital stock of the other. And the beneficial result to the public is the fact that it has to pay no switching charge—neither competitive nor non-competitive.

III.

The Commission's report and order are contrary to both the spirit and the letter of the Act to Regulate Commerce, and the subject-matter thereof is not within the Commission's jurisdiction because:

(1) They violate Section 15 in ordering competitive switching and thus forcing one carrier to join another in making a through route, which embraces less than the entire length of the refusing company's railroad.

The Commission, at page 88 of its report, thus finds and declares that the service here involved is a "railroad haul" and constitutes "transportation," in contradistinction to a mere switching service (italics ours):

"Most of the industries involved are situated from 2 to 7 miles from Shops Junction. The service asked is a railroad haul, and in our opinion constitutes transportation, as defendants tacitly concede when they argue that the local rates to and from Shops Junction and Vine Hill at which they had moved Tennessee Central competitive traffic are transportation rates for transportation to and from local points."

This being true, the Commission, in prescribing what is in effect a through route, was bound by, but violated, the following provision of Section 15 of the Act to Regulate Commerce:

"And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with

another practicable through route which could otherwise be established."

(2) If, on the other hand, the transaction involved is a mere switching service, the order is violative of the proviso to Section 3 of the Act, for, while a joint owning and operating arrangement is not, as held by the Commission at page 85 of its report, a "facility" as used in said section, yet, if it were, then the affording of such a "facility" to the Tennessee Central would not be a "proper or reasonable" thing, and it also would be in violation of the following proviso to said Section 3, which was designed to protect a railroad's terminals from just what is here sought:

"but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

If required merely to switch to and from the Tennessee Central, it would be giving to that road—their competitor—the commercial use of said terminals in order to enable it to begin or complete a transportation haul; if required to allow the Tennessee Central to run its engines upon said terminal tracks and move cars to and from the point of connection (as the two constituent companies do), it would be giving it the physical use of said terminals. Both of said uses come within the prohibition of said proviso.

IV.

Plaintiffs state that at page 90 of its report the Commission, in summing up its conclusion in this case, used the following language (italics ours):

"Under all of the circumstances disclosed we are of the opinion and find that defendants' refusal to switch competitive traffic to and from the Tennessee Central at Nashville on the same terms as non-competitive traffic while interchanging both kinds of traffic on the same terms with each other is unjustly discriminatory, and that so long as defendants switch both competitive and non-competitive traffic for each other at Nashville at a charge equal to the cost of the service, exclusive of fixed charges, the charges imposed for switching Tennessee Central traffic should not exceed the cost of the service performed."

Plaintiffs state that the Commission's said finding that the plaintiffs switch both competitive and non-competitive traffic for each other at Nashville at a charge equal to the cost of service, exclusive of fixed charges, is an arbitrary finding, which is wholly unsupported by any evidence, and is, in fact, disproved by all the evidence in the case. While still denying that the plaintiffs switch for each other at all, plaintiffs state that, if their joint owning and operating arrangement should be held to constitute a reciprocal switching arrangement, the burden upon them for performing such service is necessarily much greater than the actual cost of such service, excluding fixed charges, and that in determining the extent of such burden the Commission should have considered, not only the cost of the service, excluding fixed charges, but also a proper and equitable proportion of the taxes, interest, rental and other fixed charges, and a fair return upon their property devoted to such Accordingly plaintiffs say that so much of the Commission's report, embraced in the above quotation, as finds that "the charges imposed for switching Tennessee Central traffic should not exceed the cost of the service performed" is also arbitrary and unsupported by any evidence.

Plaintiffs further say that if the order itself, which is ambiguous, is to be construed, in the light of the report, to mean that plaintiffs, while maintaining the existing arrangement as between themselves, shall switch interstate traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville for rates and charges that shall not exceed the actual cost of the service, exclusive of fixed charges, then said order is confiscatory and the enforcement of same will take plaintiffs' property without fair or just compensation, in violation of the Fifth Amendment to the Constitution of the United States, for the reason that such a upon its face, will not yield anything for taxes upon the property and facilities involved in conducting the traffic, and will not allow nor afford a fair and reasonable return, or any return whatever, upon the value of the property necessarily devoted by plaintiffs to publie use in the performance of such service. Said property, attributable to the furnishing of said particular service, is a substantial amount, to-wit, the sum of at least two and one-half million dollars (\$2,500,000), and a fair and reasonable return thereon would be at least

eight per centum.

They state that, adding to the operating cost (found by the Commission to be \$4.13 per car) the taxes and a fair and reasonable return upon their property attributable to said service, the cost thereof, if the Commission had power to order it, should be, and is, not less than \$7.50 per car.

V.

Plaintiffs say that the portion of the order of the Commission which requires them to switch interstate traffic to and from the tracks of the Tennessee Central at rates and charges "which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city" is impossible of compliance:

Because they do not maintain any charges for

switching between their respective tracks.

Because, if the Commission means that plaintiffs shall publish as a fixed rate for switching to and from the Tennessee Central a charge equal to the expense which each company incurs in making a similar movement between the point of interchange and industries upon its joint associate's tracks, then, besides, being confiscatory, such a charge would necessarily and constantly vary in amount and hence could not be published as a fixed rate.

Because the only remaining method of putting the three lines upon a parity, namely, the admission of the Tennessee Central into plaintiff's joint owning and operating arrangement, besides being unconstitutional and illegal, would, if authorized by law, be impossible of enforcement against the Tennessee Central without its con-

sent.

Plaintiffs state that unless an interlocutory injunction be issued herein, enjoining the execution and enforcement of the aforesaid order during the pendency of this action, great and irreparable injury will result to them, for the reason that they will suffer heavy loss of road-haul revenues which will go to the Tennessee Central Railroad and its connections, and will otherwise be caused great loss, expense and inconvenience, as hereinbefore set out.

Plaintiffs state further that, while the order herein complained of does not become effective until June 1, 1915, it requires them to prepare, publish and file new tariffs for the use of the Interstate Commerce Commission and the public on or before May 1, 1915, in order to give the thirty days' notice prescribed by said order,

which will necessitate furnishing said new tariffs to the printer not later than April 26, 1915. They state that, in addition to the expense of printing, there is also involved the expense and labor of distributing these new tariffs, to the number of 1,935, to all of their local freight agents over both systems, as well as to their general, division and soliciting representatives throughout the entire country, and to certain shippers. Plaintiffs state that if the court is not prepared to render its decision upon the motion for an interlocutory injunction before April 26th, they are entitled to a temporary restraining order, to be in force until the motion for an interlocutory injunction is passed upon, not only because the expense and labor of promulgating the new tariffs would be unnecessary, if the court should grant such interlocutory injunction, but also because in that event it would be necessary to proceed to cancel said new issue of tariffs and reissue the old tariffs, and the public generally, particularly the shippers over the plaintiff's lines of railroads wherever located, would be greatly inconvenienced because of the confusion and complications which would necessarily arise out of the issue of the new tariffs and their early cancellation and the reissue of the old ones.

Wherefore, plaintiffs pray:

(1) That an interlocutory injunction issue herein suspending and restraining the enforcement, operation and execution of the order made and entered by the Interstate Commerce Commission herein complained of pending the final hearing and determination of this suit; and, if the motion for an interlocutory injunction is not decided on or before April 26, 1915, that a restraining order of like effect issue to remain in force until the motion for an interlocutory injunction is disposed of:

(2) That upon final hearing a decree be entered herein setting aside and annulling said order, and perpetually enjoining the defendants and their agents, servants and representatives from enforcing same, and from taking steps or instituting any proceedings for the enforce-

ment thereof:

(3) That a writ of subpoena be granted and directed to the defendants and each of them, commanding them at a certain date and under a certain penalty specified to appear and make full, true and complete answer to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide such orders and decrees herein as

shall seem meet and proper in equity and good conscience.

And plaintiffs pray for their costs and for such other and further relief as justice and equity may require.

HENBY L. STONE,
WILLIAM A. COLSTON,
R. WALTON MOORE,
F. W. GWATHMEY,
EDWARD S. JOUETT,
Solicitors for Plaintiffs.

State of Kentucky, County of Jefferson.

Affiant, A. R. Smith, states that he is the Third Vice-President of the Louisville & Nashville Railroad Company, one of the plaintiffs herein; that in said official capacity he has charge and supervision of the traffic affairs of said company, which include the matters involved in this suit; and that the statements of the foregoing petition are true, as he believes.

A. R. SMITH.

Subscribed and sworn to before me by A. R. Smith, this April 1, 1915. My commission expires January 30, 1916.

[Seal]

George R. Ewald, Notary Jublic, Jefferson Co., Ky.

With this petition, as an exhibit, was filed a certified copy of the entire record of the proceeding before the Interstate Commerce Commission. This transcript of proceedings appears as Volumes II and III of this record.

The foregoing petition and exhibits were endorsed: Filed April 2, 1915. H. M. Doak, Clerk, by F. B. Mc-Lean, D. C.

On April 2, 1915, the following application of plaintiffs for an interlocutory injunction and temporary restraining order was filed, to-wit:

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., - - - - - - - - Plaintiffs, versus

UNITED STATES OF AMERICA, ET AL., - Defendants.

APPLICATION FOR INTERLOCUTORY INJUNC-TION, AND TEMPORARY RESTRAINING OR-DER.

Come the plaintiffs, Louisville & Nashville Railroad Company, Nashville & Chattanooga Railway, Louisville & Nashville Terminal Company, by counsel, and, upon the grounds set out in the petition herein, hereby make application to the United States District Court for the Middle District of Tennessee, and the judges thereof, to grant and issue in this suit, to continue during its pendency, an interlocutory injunction suspending and restraining the enforcement, operation and execution of the order of the Interstate Commerce Commission referred to in the petition herein, being the order entered on February 1, 1915, in the proceeding lately pending before said Commission, docketed as No. 6484, and entitled City of Nashville, et al., v. Louisville & Nashville Railroad Company, et al., involving switching arrangements at the City of Nashville; and, also, to grant and issue a temporary restraining order staying and suspending the enforcement, operation and execution of said order of the Interstate Commerce Commission pending the application for said interlocutory injunction. And they ask that a time and place for hearing said application be fixed so that at least five days' notice of said hearing may be given to defendants.

H. L. Stone,
W. A. Colston,
R. Walter Moore,
F. W. Gwathmey,
Edward S. Jouett,
Solicitors for Plaintiffs.

The foregoing application was endorsed:

Filed April 2, 1915, H. M. Doak, Clerk, by N. T. Arnett, D. C.

On April 3, 1915, the following order as to hearing on injunction was entered:

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY, ET AL., - - - - - - Plaintiffs, versus

UNITED STATES OF AMERICA, ET AL., - Defendants.

This cause came on to be heard on the 3d day of April, 1915, before the court upon plaintiff's application for an interlocutory injunction and temporary restraining or-

der, as follows:

Come the plaintiffs, Louisville & Nashville Railroad Company, Nashville & Chattanooga Railway, Louisville & Nashville Terminal Company, by counsel, and, upon the grounds set out in the petition herein, hereby make application to the United States District Court for the Middle District of Tennessee, and the judges thereof, to grant and issue in this suit, to continue during its pendency, an interlocutory injunction suspending and restraining the enforcement, operation and execution of the order of the Interstate Commerce Commission referred to in the petition herein, being the order entered on February 1. 1915, in the proceeding lately pending before said Commission, docketed as No. 6484, and entitled City of Nashville, et al., v. Louisville & Nashville Railroad Company, et al., involving switching arrangements at the City of Nashville; and, also, to grant and issue a temporary restraining order staying and suspending the enforcement, operation and execution of said order of the Interstate Commerce Commission pending the application for said interlocutory injunction. And they ask that a time and place for hearing said application be fixed so that at least five days' notice of said hearing may be given to defendants.

When, upon consideration thereof, the court is pleased to order and decree that the said application for a restraining order and the said application for an interlocutory injunction will be heard before the judge of this court and two other judges whom he may call to his assistance, in accordance with the statute in such case made

and provided, in the Federal Building, in Nashville, Tenn., on Monday, April 19, 1915, at nine o'clock A. M., provided that notice of such hearings shall have been given as required by law.

On April 3, 1915, writs of subpoena were issued to the Marshal at Washington, D. C., for the United States and the Interstate Commerce Commission, and to the Marshal at Nashville for the City of Nashville, Traffic Bureau of Nashville and Tennessee Central Railroad Company, which, with their returns and endorsements, are as follows:

United States of America,
Middle District of Tennessee,
Nashville Division.

THE PRESIDENT OF THE UNITED STATES OF AMERICA-

To the United States of America and the Interstate Commerce Commission, Washington, D. C. Greeting:

You are hereby commanded and strictly enjoined to be and appear in the District Court of the United States for the Nashville Division of the Middle District of Tennessee aforesaid, at Nashville, within the time specified in the Memorandum below, to answer or otherwise defend a certain petition in equity filed in said court against you by the Louisville & Nashville Railroad, a corporation organized under the laws of the State of Kentucky and citizen and resident of such State; the Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Company, corporations organized under the laws of the State of Tennessee and residents and citizens of such State, seeking an injunction, etc., against an order of the Commission and to do further and receive what the said District Court shall consider in that behalf. And this you are in no wise to omit, under the pains and penalties of what may befall therein.

WITNESS the HONORABLE EDWARD T. SAN-FORD, Judge of the said District Court, and the seal thereof, at Nashville, this third day of April, A. D. 1915, and in the 139th year of the Independence of the United

States of America.

H. M. DOAK, Clerk, By F. B. McLean, Deputy Clerk,

SEAL.

MEMORANDUM.

Under Sec. 209, Hopkin's Judicial Code, the said defendants are required to file their answer or other defense in the clerk's office of said court on or before the thirtieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken *pro confesso*. (Equity Rule 12.)

Endorsed:

No. 30, Equity.

UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION.

Louisville & Nashville R. R. Co., et al., v. United States, et al. Returnable by the Marshal into the Clerk's office within twenty days from the issuing thereof. (Equity, Rule 12.) H. M. Doak, Clerk. Issued April 3, 1915. H. M. Doak, Clerk.

Filed April 12, 1915, H. M. Doak, Clerk, By E. L. Doak, D. C.

MARSHAL'S RETURN THEREON.

United States of America, Middle District of Tennessee.

I hereby certify that I received the within writ of subpoena at Washington City in the District of Columbia on the 5th day of April, 1915, and made service thereof at Washington City, in the District of Columbia on the 6th day of April, 1915, by delivering a copy thereof personally to Thomas W. Gregory, Attorney General of the United States of America and to the Interstate Commerce Commission by service on Alfred Holmead, Acting Secretary of said Commission, and filed with and delivered to the Department of Justice through the Attorney General and with the Interstate Commerce Commission, Washington, D. C., printed copies of the petition and Exhibits 1, 2 and 3 thereto, as filed with the clerk of the United States District Court at Nashville, Tennessee.

MAURICE SPLAIN, U. S. Marshal,

By W. B. Robison,

Chief Deputy Marshal.

United States of America,
Middle District of Tennessee,
Nashville Division.

THE PRESIDENT OF THE UNITED STATES OF AMERICA-

To the City of Nashville, Traffic Bureau of Nashville, Tennessee, Central Railroad Co., corporations organized and existing under the laws of the State of Tennessee, each with its place of business in the City of Nashville.

Greeting:

You are hereby commanded and strictly enjoined to be and appear in the District Court of the United States for the Nashville Division of the Middle District of Tennessee aforesaid, at Nashville within the time specified in the Memorandum below, to answer or otherwise defend a certain petition in equity filed in said court against you by the Louisville & Nashville Railroad Co., a corporation organized under the laws of the State of Kentucky, and citizen and resident of such State; the Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Company, corporations organized under the laws of the State of Tennessee and residents and citizens of such State, seeking an injunction, etc., against an order of the Commission and to do further and receive what the said District Court shall consider in that behalf. And this you are in no wise to omit, under the pains and penalties of what may befall therein.

WITNESS the HONORABLE EDWARD T. SAN-FORD, Judge of the said District Court, and the seal thereof, at Nashville, this third day of April, A. D. 1915, and in the 139th year of the Independence of the United

States of America.

SEAL.

H. M. Doak, Clerk, By F. B. McLean, Deputy Clerk.

MEMORANDUM.

Under Sec. 209, Hopkin's Judicial Code, the said defendants are required to file their answer or other defense in the Clerk's office of said court on or before the thirtieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso. (Equity, Rule 12.)

Endorsed:

No. 30. In Equity.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Louisville & Nashville R. R. Co., et al., v. United States of America, et al. Returnable by the Marshal into the Clerk's office within twenty days from the issuing thereof. (Equity, Rule 12.) H. M. Doak, Clerk. Issued April 3, A. D. 1915. H. M. Doak, Clerk.

MARSHAL'S RETURN THEREON.

United States of America, Middle District of Tennessee.

I hereby certify that I received the within writ of subpoena at Nashville in Davidson County, Tennessee, on the 3d day of April, 1915, and made service thereof at Nashville, in Davidson County, Tennessee, on the 3d and 5th day of April, 1915, by delivering a copy thereof personally to T. M. Henderson, Com. for Traffic Bureau, Hilary E. House, Mayor of the City of Nashville, Tennessee, W. K. McAlister, Receiver for Tenn. Central R. R. and delivering copy of petition and Exhibits Nos. 1, 2, 3, thereto to each of above parties. Returning exact copies of same to H. M. Doak, Clerk, United States District Court.

Jonas T. Amis, U. S. Marshal, By John C. Adamson, Deputy Marshal. The following notice of said order was returned with endorsements thereon showing acknowledgments of service.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Louisville & Nashville Railboad Company, et al., - - - - - - Plaintiffs, versus

United States of America, et al., - Defendants.

NOTICE OF HEARING OF APPLICATION FOR INTERLOCUTORY INJUNCTION AND TEMPORARY RESTRAINING ORDER.

The defendants, the United States of America, through the Attorney General of the United States, the Interstate Commerce Commission, City of Nashville, Traffic Bureau of Nashville, and Tennessee Central Railroad Company, are hereby notified that on Monday, April 19, 1915, at or about the hour of nine o'clock A. M., in the Federal Building in Nashville, Tennessee, a hearing will be held of plaintiffs' application to the United States District Court for the Middle District of Tennessee, and the judges thereof, to grant and issue in this suit, to continue during its pendency, an interlocutory injunction suspending and enjoining the enforcement, operation and execution of the order of the Interstate Commerce Commission referred to in the petition herein, being the order entered on February 1, 1915, in the proceeding lately pending before said Commission, docketed as No. 6484, and entitled City of Nashville, et al., v. Louisville & Nashville Railroad Comapny, et al., involving switching arrangements at the City of Nashville; and, furthermore, to grant and issue a temporary restraining order staying and suspending the enforcement, operation and execution of said order of the Interstate Commerce Commission, pending the application for said interlocutory injunction.

This notice is given pursuant to law and to the requirement of the following order of the said court entered herein on April 2, 1915, to-wit:

United States District Court, Middle District of Tennessee, Nashville Division.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., - - - - - - - Plaintiffs,

versus

UNITED STATES OF AMERICA, ET AL., - Defendants.

This cause came on to be heard on the 2d day of April, 1915, before the court upon plaintiff's application for an interlocutory injunction and temporary restraining or-

der, as follows:

Come the plaintiffs, Louisville & Nashville Railroad Company, Nashville & Chattanooga Railway, Louisville & Nashville Terminal Company, by counsel, and, upon the grounds set out in the petition herein, hereby make application to the United States District Court for the Middle District of Tennessee, and the judges thereof, to grant and issue in this suit, to continue during its pendency, an interlocutory injunction suspending and restraining the enforcement, operation and execution of the order of the Interstate Commerce Commission referred to in the petition herein, being the order entered on February 1, 1915, in the proceeding lately pending before said Commission, docketed as No. 6484, and entitled City of Nashville, et al., v. Louisville & Nashville Railroad Company, et al., involving switching arrangements at the City of Nashville; and, also, to grant and issue a temporary restraining order staying and suspending the enforcement, operation and execution of said order of the Interstate Commerce Commission pending the application for said interlocutory injunction. And they ask that a time and place for hearing said application be fixed so that at least five days' notice of said hearing may be given to defendants.

When, upon consideration thereof, the court is pleased to order and decree that the said application for a restraining order and the said application for an interlocutory injunction will be heard before the judge of this court and two other judges whom he may call to his assistance, in accordance with the statute in such case made and provided, in the Federal Building, in Nashville, Tenn., on Monday, April 19, 1915, at nine o'clock A. M.,

32 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AL.

provided that notice of such hearings shall have been given as required by law.

This April 5, 1915.

versus

H. L. STONE,
W. A. COLSTON,
R. WALTER MOORE,
F. W. GWATHMEY,
EDWARD S. JOUETT,
Solicitors for Plaintiffs.

Service of this notice accepted this April 6, 1915.

A. G. Ewing, Jr., for City of Nashville, Tenn.
A. G. Ewing, Jr., for Nashville Traffic Bureau.
Walter Stokes, Attorney for Tennessee Central R. R. Co.

The following appearance of the Interstate Commerce Commission was filed April 19, 1915:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., Plaintiffs,

No. 30-E.

UNITED STATES OF AMERICA, ET AL., - Defendants.

The Interstate Commerce Commission hereby enters its appearance in the above-numbered and entitled cause.

Interstate Commerce Commission,

By Joseph W. Folk,
Edward W. Hines,
Counsel for the Interstate Commerce
Commission.

Said appearance is endorsed:

Filed April 19, 1915. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk.

On April 19, 1915, the following order was entered passing the cause:

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASH-VILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

versus

No. 30, Equity.

UNITED STATES OF AMERICA.

Came the parties in proper person and the cause coming on to be heard upon the motion for injunction, etc., and by consent of parties the cause is passed for hearing until tomorrow morning.

McCall, U. S. District Judge.

Approved for entry this April 19, 1915. Entered Equity Journal A, page 145.

On Nov. 9th as of April 20, 1915, the Interstate Commerce Commission filed the following motion to dismiss and answer:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, AND THE LOUISVILLE & NASHVILLE TERMINAL COMPANY, Plaintiffs,

versus No. 30, Equity.

United States of America,
Interstate Commerce Commission,
City of Nashville,
Traffic Bureau of Nashville, and
Tennessee Central Railroad Company, - Defendants.

MOTION TO DISMISS, AND ANSWER OF THE INTERSTATE COMMERCE COMMISSION.

The defendants, City of Nashville and Traffic Bureau of Nashville, move to dismiss the petition herein and for cause say:

That the petition herein does not present a justiciable issue triable by this court, in that it does not appear that the Interstate Commerce Commission was without jurisdiction under the act to regulate commerce to enter the order referred to in the petition; or that said Commission did not grant a full hearing to the parties before the entry of said order; or that there was any irregularity in the proceeding before said Commission prior to the entry of said order; or that there was no substantial evidence to support said order; nor does the petition set forth any or sufficient facts to show confiscation of the property of plaintiffs or any of them, or any other violation of the constitutional rights of the plaintiffs entitling them to the relief or any part thereof prayed for.

I.

For answer to the petition these defendants admit that the plaintiffs are corporations as alleged in their petition, and that on January 17, 1914, defendants, the City of Nashville and the Traffic Bureau of Nashville, filed a complaint with the Interstate Commerce Commission, of which Exhibit A, filed with said petition, is a copy; that answers were filed, a formal hearing had, and a report and order made by the Interstate Commerce Commission, all as alleged in said petition, and a copy of said report and order are filed herewith as part hereof, marked "Exhibit A."

II.

These defendants deny that said order or any part thereof is arbitrary, illegal, null, or void, or without evidence to support the same, and deny that the Interstate Commerce Commission was or is without jurisdiction, power, or authority in law to make or enforce said order, and deny that said order is arbitrary or unsupported by substantial evidence, or was made because of a mistake of law. These defendants further deny that said order is in violation of the act to regulate commerce, that it is impossible of compliance or is confiscatory, or that it takes plaintiffs' property without due process of law or denies to them the equal protection of the laws.

III.

For further answer herein these defendants deny that any fact stated in plaintiff's petition which is or was essential to support the order of the Interstate Commerce Commission attacked herein was not established by substantial evidence in the proceeding, in which said order was entered, and deny that the facts alleged in said petition to show that said order is void, or that any of said facts were, if material for that purpose, supported by uncontradicted or undisputed evidence in said proceeding.

IV.

For further answer herein these defendants deny that all or any of the facts appearing in the record or the facts specifically admitted in the report of the Interstate Commerce Commission show that the plaintiffs do not switch for each other either competitive or non-competitive traffic, and deny that any of the facts which are alleged in the petition to show that plaintiffs do not switch for each other, either competitive or non-competitive traffic, were or are uncontradicted in said record, except such of said facts as are wholly immaterial and do not have any bearing on said question. These defendants further deny that the finding in said report that the plaintiffs switch for each other is contrary to the indisputable character of the evidence or is unsupported by any evidence, and deny that the order based thereon is illegal, arbitrary, or void.

V.

For answer to the fourth paragraph of plaintiffs' petition these defendants deny that the finding of the Interstate Commerce Commission, that the plaintiffs switch both competitive and non-competitive traffic for each other at Nashville at a charge equal to the costs of service, exclusive of fixed charges, is an arbitrary finding or is wholly unsupported by any evidence or is disproved by all the evidence in this case. For further answer to said paragraph these defendants deny that any finding which it made is arbitrary or unsupported by evidence and deny that said order is confiscatory or that the enforcement of same will take plaintiffs' property without fair or just compensation in violation of the fifth amendment to the Constitution of the United States.

VI.

For answer to the fifth paragraph of plaintiffs' petition these defendants deny that any portion of said order is impossible of compliance, and deny that unless an interlocutory injunction be issued herein great or irreparable injury will result to plaintiffs or that plaintiffs will suffer heavy loss of road-haul service to the Tennessee Central Railroad and its connections or will otherwise be caused great loss, expense, or inconvenience.

VII.

Further answering, these defendants say that the Interstate Commerce Commission had full jurisdiction over the matters in controversy before it; that the jurisdiction as to said matters is primary and exclusive, and that said conclusions of fact in said matters in controversy are final and conclusive upon the plaintiffs, and each of them and that the plaintiffs are in duty bound to obey said order. These defendants further state that the allegations of said petition other than those herein admitted or denied tender issues which this court has no power to determine, and, therefore, these defendants neither admit nor deny said allegations.

And having fully answered said petition, these defendants pray to be hence dismissed with its reasonable

costs and charges in their behalf expended.

A. G. EWING, JR., & F. M. GARARD, Counsel for City of Nashville, Tennessee. Traffic Bureau of Nashville.

CITY OF NASHVILLE, DAVIDSON COUNTY.

I, H. E. Howse, on oath, depose and say that I am Mayor of the City of Nashville, and make this affidavit on behalf of said City; that I have read the foregoing answer and know the contents thereof and that the same is true, to the best of my knowledge, information and belief. H. E. Howse.

Sworn and subscribed to before me, notary public within and for the Davidson County, State of Tennessee, this 20th day of April, 1915.

SEAL.

J. W. DASHIELL, Notary Public.

I, T. M. Henderson, on oath, depose and say that I am the Commissioner of the Traffic Bureau of Nashville, and make this affidavit on behalf of the Traffic Bureau to Nashville; that I have read the foregoing answer and know the contents thereof and that the same is true, to the best of my knowledge, information and belief. T. M. HENDERSON.

Sworn and subscribed to before me, notary public, within and for the Davidson County, State of Tennessee, this 20th day of April, 1915.

E. L. Doak, Notary Public.

SEAL.

Filed April 20, 1915. H. M. Doak, Clerk.

On April 20, 1915, the United States of America filed its motion to dismiss:

IN THE DISTRICT COURT OF THE UNITED STATES, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company, Plaintiffs,

versus In Equity, No. 30.

UNITED STATES OF AMERICA, ET AL.

MOTION TO DISMISS THE PETITION.

Comes now the United States, defendant, by its counsel, and moves the court to dismiss the petition in the above-entitled cause at the cost of the petitioners.

As grounds for this motion it is shown:

(1) The petition including the exhibits attached thereto and made a part hereof is without equity on its face and does not state any cause of action against the defendant.

(2) The report of the Interstate Commerce Commission and the order entered in pursuance thereof were made and entered after a full hearing and due notice and rest on substantial evidence adduced on the issues made by the parties and the matters and things alleged in the petition and sought to be put in issues are foreclosed by the findings of fact.

(3) The said order was legally made and duly entered. It does not contravene any constitutional limitation. It is within the constitutional and statutory authority of the Commission. It is not unsupported by testimony. It will not be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission.

Wherefore respondent prays that its said motion be sustained.

BLACKBURN ESTERLINE. Special Assistant to the Attorney General. LEE DOUGLAS. United States Attorney, Middle District of Tennessee.

Copy filed November 9, 1915, as of April 20, 1915. H. M. Doak, Clk., by F. B. McLean, D. C.

On April 20, 1915, the Tennessee Central Railroad Company filed the following answer:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, AT NASHVILLE.

LOUISVILLE & NASHVILLE RAILROAD COMPANY. ET AL. Plaintiffs. versus

UNITED STATES OF AMERICA, ET AL., - Defendants.

The answer of the Tennessee Central Railroad Company to the petition filed April 2, 1915, in the above-styled cause.

Respondent for answer to so much of said petition

as it deems material, answering says-

It is true this respondent, Tennessee Central Railroad Company, is a corporation organized under the laws of the State of Tennessee and owns a line of railroad from Hopkinsville, Ky., to Nashville, Tenn., and from Nashville, Tenn., to Harriman, Tenn., which is now being operated by H. B. Chamberlain and W. K. McAlister, as Receivers under orders of this court.

Respondent denies that the order of the Interstate Commerce Commission is invalid for any reason and hence denies that the plaintiffs are entitled to either a

restraining order or an injunction.

Respondent had been and is now willing in connection with the plaintiffs to fully perform the order of the Interstate Commerce Commission complained of in the petition, which relates to reciprocal switching between plaintiffs and respondent in the City of Nashville, Tenn.

If, however, this honorable court should grant either a restraining order or an injunction as prayed in the petition, then and in such event respondent insists that such order or injunction should apply to this respondent as well as to plaintiffs, so that respondent should not be left in an unfair attitude of being forced to do switching for plaintiffs and they not forced to do switching for it. If this condition should arise it would result in great financial disaster to respondent.

Respondent having fully answered prays to be hence

dismissed, with its reasonable costs.

TENNESSEE CENTRAL RAILROAD COMPANY,
By S. W. FORDYCE, JR.,
WALTER STOKES,
Solicitors

Said answer was endorsed:

Filed April 20, 1915, H. M. Doak, Clerk, by N. T. Arnett, D. C.

On April 20, 1915, the plaintiffs filed the following affidavit of A. R. Smith:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis R'y, Louisville & Nashville Terminal Co., - - Plaintiffs,

vs. No. 30. Equity.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
CITY OF NASHVILLE,
TRAFFIC BUREAU OF NASHVILLE,
TENNESSEE CENTRAL RAILROAD Co.,

- Defendants.

AFFIDAVIT OF A. R. SMITH.

Affiant, A. R. Smith, states that he is a resident of Louisville, Kentucky, and that he is now and has been for the last 10 years Third Vice President of the Louisville & Nashville Railroad Company; that as said Third Vice President he is in charge of all of the traffic of the Louis-

ville & Nashville Railroad Company, and of the traffic arrangements between the Louisville & Nashville Railroad Company and other transportation lines: that he is familiar with the traffic affairs of the Louisville & Nashville Railroad Company and with the traffic relations of that company with other lines, and that he is particularly familiar with the conditions which surround the handling of traffic into and out of Nashville, Tennessee, by the Louisville & Nashville Railroad Company and its connections, on the one hand, and by competing lines of railroad, on the other hand. Affiant's experience in traffic affairs of southeastern railroads has extended over a period of 25 years, and his knowledge of the traffic affairs of the Louisville & Nashville Railroad Company and its competitors enables him to make reasonably correct estimates of the effect upon the traffic of the Louisville & Nashville Railroad Company of establishing a switching arrangement with the Tennessee Central Railroad Company, at Nashville, Tennessee, as contemplated in the order of the Interstate Commerce Commission in issue in this case.

By the term "competitive traffic" as used or referred to by affiant in this affidavit is meant that traffic which the Louisville & Nashville Railroad Company now handles or may hereafter handle into or out of Nashville, West Nashville, East Nashville, South Nashville, or other points in the Nashville Terminals which could be handled into or out of said Terminals by some other line of railway, and by traffic competitive with the Tennessee Central Railroad is meant that traffic which is now handled or may be handled into or out of the Nashville Terminals by the Louisville & Nashville Railroad Company which might be handled by the Tennessee Central and its connections.

For brevity, in this affidavit, affiant will hereafter refer to business handled into or out of Nashville, West Nashville, East Nashville, South Nashville or other points in the Nashville Terminals as business handled into or out of Nashville.

The numbers of carloads of competitive freight received and forwarded by the Louisville & Nashville Railroad Company at Nashville during the months of September, 1913, and March, 1914, together with the aggregate amounts of gross freight revenue derived by the Louisville & Nashville Railroad Company therefrom, and the average amounts of gross revenue per car, were as follows:

	Received	Forwarded
Number of cars	2,590	2,55 0
L. & N. gross revenue	\$134,992.00	\$89,370.00
Average gross earnings per ca	r 52.12	35.04

Said months are fairly representative months, and based upon the business for those months the volume of competitive traffic received and forwarded by the Louisville & Nashville Railroad Company at Nashville, Tennessee, for one year, is as follows:

	Received	Forwarded
Number of cars	15,540	15,300
L. & N. gross revenue	\$809,954.00	\$536,220.00

These figures include carload freight traffic handled at all side tracks, including public team tracks, and also those tracks which are served both by the Louisville & Nashville Railroad Company and the Tennessee Central Railroad Company. In affiant's opinion, the volume of business handled at side tracks which are served both by the Tennessee Central and the Louisville & Nashville, and the volume of business handled at public team tracks combined will not exceed 25 per cent of the total stated for all of the competitive carload traffic. Accordingly, affiant says that the carload competitive freight traffic handled into and out of Nashville by the Louisville & Nashville Railroad Company at industrial tracks now served by the Louisville & Nashville Railroad Company and not served by the Tennessee Central, and excluding any business handled on team tracks, is annually at least in the following amounts:

	Received	Forwarded
Number of cars		11,475
L. & N. gross revenue	.\$607,465.00	\$402,165.00

Affiant has caused to be made a close investigation of the volume of competitive traffic handled into and out of Nashville by the Tennessee Central originating at or taking delivery on side tracks served by it exclusively. In conducting this investigation, inquiry was made of shippers and receivers of freight located on side tracks so exclusively served by the Tennessee Central and the results of this inquiry were checked against records prepared by affiant's solicitation force at Nashville, and the results arrived at from the two sources were in very close approximation. Said investigation shows, and affiant believes that the competitive traffic of the Tennessee Central Railroad Company received at and for-

warded from Nashville at tracks served exclusively by the Tennessee Central amounts annually to 2,484 cars received and 480 cars forwarded, or to an aggregate of 2,964 cars per annum, both forwarded and received.

If the Louisville & Nashville Railroad Company were to handle all of this business and were to make the same average earnings per car as it made on the business which it did actually handle, the gross revenue resulting therefrom to the Louisville & Nashville Railroad Company would be as follows:

On business received\$129,466.00 On business forwarded16,819.00

Assuming 305 working days per annum, the average daily movement of competitive traffic handled into and out of Nashville by the Louisville & Nashville Railroad Company is as follows:

And the competitive traffic received and forwarded by the Tennessee Central Railroad Company is as follows:

The volume of the competitive traffic handled into and out of Nashville by the Louisville & Nashville Railroad Company that would be available for possible handling by the Tennessee Central Railroad in the event reciprocal switching is enforced at Nashville will not be less than 95 per cent of the whole volume of competitive traffic handled into and out of Nashville by the Louisville & Nashville Railroad Company; that is to say, at least that proportion of the total competitive traffic of the Louisville & Nashville Railroad Company is capable of being satisfactorily handled via Harriman and Emory Gap, Tennessee, at the eastern end of the Tennessee Central and via Hopkinsville, Kentucky, at the western end of said line.

Affiant is of the opinion that the throwing open of the Nashville Terminals so as to permit the routing via the Tennessee Central Railroad of competitive traffic originating at or having delivery on said terminals, as is contemplated by the order of the Interstate Commerce Commission in issue in this case, will cause a loss of not less

than 25 per cent of the competitive traffic received by the Louisville & Nashville Railroad Company at industrial tracks (exclusive of team tracks and tracks served jointly with the Tennessee Central) at Nashville and a loss of not less than 15 per cent of the competitive traffic forwarded by the Louisville & Nashville Railroad Company from industrial tracks (exclusive of team tracks and tracks served jointly with the Tennessee Central) at Nashville; that is to say, the annual losses on competitive business resulting to the Louisville & Nashville Railroad Company from such arrangements will be at least, as follows:

	Received	F'orwarded
Number of cars	2,914	1,721
L. & N. gross revenue	\$151,866.00	\$60,325.00

as a partial offset to which the Louisville & Nashville Railroad Company may expect to take away from the Tennessee Central Railroad Company the same percentages of its competitive traffic, to-wit, 25 per cent of the received competitive traffic of the Tennessee Central and 15 per cent of the forwarded competitive traffic of the Tennessee Central amounting to the following annual additions to the business of the Louisville & Nashville Railroad Company:

	Received	Forwarded
Number of cars	621	72
L. & N. gross revenue	\$32,366.00	\$2,523.00

That is to say, the annual net losses in cars and gross and revenue resulting to the Louisville & Nashville Railroad Company from the arrangement provided for in the order of the Interstate Commerce Commission in this case would be at least, as shown by the following table:

	Cars	Gross Revenue
Loss L. & N. to Tenn. Cent., received	2,914	\$151,866.00
Loss L. & N. to Tenn. Cent., forwarded	1,721	60,324.00
Total	4,635	\$212,190.00
Gain L. & N. from Tenn. Cent., received	621	\$ 32,366.00
Gain L. & N. from Tenn. Cent., forwarded	72	2,523.00
Total	693	\$34,889.00

Net loss L. & N. to Tenn. Cent., received	2,293	\$119,500.00
Net loss L. & N. to Tenn. Cent., forwarded	1,649	57,801.00
Total	3,942	\$177,301.00

The revenue losses above indicated are losses in gross operating revenues, and, in order to determine the loss in the net revenue, it is necessary to take into consideration the saving in expense, if any, which would result to the Louisville & Nashville Railroad Company from the handling of the lost traffic by the Tennessee Central Rail-The loss to the Louisville & Nashville Railroad Company of this volume of traffic will not affect any of its taxes, interest, or other fixed charges, nor its operating expenses other than what are termed haulage or outof-pocket costs. The plant consisting of tracks, cars, engines, depots and employes will still be there capable of handling 100 per cent of the said competitive traffic into and out of Nashville, and the only cost of which the Louisville & Nashville Railroad Company would be relieved. would be the out-of-pockets cost, or that which accrues from the actual transportation of the business and which would be saved if the business is not transported. The ratio of operating expenses, freight, to operating revenues, freight, for the entire system of the Louisville & Nashville Railroad Company, was for the fiscal year ended June 30, 1914, 77.77 per cent. This ratio is affected to a considerable extent by a very large proportion of branch line mileage, which branch lines operate under relatively high ratios of expenses, and are not used to any appreciable extent in moving the competitive traffic herein involved. Affiant believes that the operating expenses attributable to the particular competitive traffic involved in this case, including all items embraced within the term operating expenses, amount to less than would be indicated by the operating ratio for the system. And affiant believes that not more than 50 per cent of the total operating expenses represents outof-pocket costs, or costs which could be saved if the competitive traffic in question were not handled. And affiant believes that the amount of expenses which could be saved by reason of the fact that the competitive traffic in question is not handled would not amount to more than 40 per cent of the gross revenue which would be lost with that traffic; that is to say, affiant believes that of the gross revenue losses hereinabove indicated, at least 60 per cent

would represent a net and absolute loss to the Louisville & Nashville Railroad Company; in other words, affiant believes that if the switching arrangements contemplated by the order of the Interstate Commerce Commission in issue in this case, were put into effect, the net or absolute losses to the Louisville & Nashville Railroad Company per year, would not be less than the amounts shown in the following table, to-wit:

On competitive traffic received at Nashville..\$ 71,700.00 On competitive traffic forwarded from Nash-34,680.00

On competitive traffic received and forwarded at Ñashville\$106,380.00

Among the facts considered by affiant in making the

estimates hereinabove stated, are the following:

The principal connections of the Tennessee Central Railroad are the Cincinnati, New Orleans and Texas Pacific Railway at Emory Gap, Tennessee, the Southern Railway at Harriman, Tennessee, and the Illinois Central

Railroad Company at Hopkinsville, Kentucky.

The Cincinnati, New Orleans and Texas Pacific Railway is controlled by the Southern Railway, and is part of the Queen & Crescent System, extending from Cincinnati to New Orleans, Vicksburg and Shreveport, which Queen & Crescent System is closely allied with the Southern Railway. The Southern Railway System is the largest railroad system in the South; it controls the Mobile and Ohio Railroad, the Georgia, Southern & Florida Railway and a number of smaller companies. The aggregate mileage of the Southern Railway and allied lines is 10,171 miles.

The Illinois Central Railroad operates through Iowa, Southern Wisconsin, Illinois and in the Mississippi Valley States east of the Mississippi River, and is one of the strongest lines operating in the southern section of the There are 6,141 miles of road in this United States.

system.

The traffic resources and influences of these two great systems are enormous, and they are necessarily formid-

able competitors.

In some instances, the complete interests of the Southern Railway and its allied lines in handling traffic to and from Nashville, are centered in the route of the Tennessee Central Railroad. In almost all other instances the major interests of said roads, in the handling of traffic which

they may control or can secure by solicitation, are in the use of the Tennessee Central's route to and from Nashville, because such route gives them the longest hauls and the maxima of revenue, as opposed to routes through Chattanooga, Atlanta, Birmingham and other junction points. The instances where the use of other routes than that via the Tennessee Central Railroad will pay to the Southern Railway and its allied interests as great a revenue as can be secured by them through the Harriman or Emory Gap, Tennessee Central Route, are inconsiderable.

The situation is substantially the same with respect to the major portion of the traffic originated, controlled, or influenced by the Illinois Central System, which can use the route via Hopkinsville and the Tennessee Central to the best advantage.

To conduce to a better understanding of what this competition of the Tennessee Central Railroad and its strong connecting lines will mean to the Louisville & Nashville Railroad Company, the following details are

stated as examples:

At Cincinnati and Lexington, the Cincinnati, New Orleans & Texas Pacific Railway is just as strong locally and in its favor and connections as is the Louisville & Nashville Railroad Company; it will work traffic exclu-

sively via Emory Gap.

The Southern Railway at Louisville, through its terminal arrangements, is able to reach numerically more industries than are on the Louisville & Nashville Railroad individually, and while the Louisville & Nashville Railroad Company can reach the majority of the terminals that the Southern Railway reaches, nevertheless the Southern Railway has a very strong following in that city, and it will work the business which it can control, exclusively via Emory Gap. At Shelbyville, Versailles, Midway, Paris, Maysville, Richmond, Nicholasville, Winchester, Georgetown, Frankfort, Junction City, and other Kentucky towns, the Southern Railway, and the Cincinnati, New Orleans and Texas Pacific Railway, either directly or in connection with other railroads, can actively compete for business to Nashville, which these lines will work exclusively via Emory Gap.

At Evansville, Ind., and Henderson and Owensboro, Kentucky, the Illinois Central is approximately in as advantageous position as is the Louisville & Nashville Railroad, and will work Nashville Traffic exclusively via

Hopkinsville.

At Evansville, too, the Southern Railway is able to compete and will work exclusively via Emory Gap.

At St. Louis, Mo., East St. Louis and Belleville, Illinois, the Illinois Central Railroad is fully as prominent as is the Louisville & Nashville Railroad, and while it has a route via Martin, its better paying route is via Hopkinsville. At any rate it will not work any traffic from or to these points via the Louisville & Nashville Railroad. The Southern Railway will also compete for the business to and from the St. Louis group and will work such business

exclusively via Emory Gap.

At Memphis, where the Illinois Central Railroad is preponderantly strong, its exclusive route is in connection with the Tennessee Central Railroad via Hopkinsville. For all points south of Memphis on the Illinois Central System, including the Yazoo and Mississippi Valley Railroad, while it has routes in connection with the Louisville & Nashville Railroad through Memphis and Milan, its long haul and better revenue routes is via Hopkinsville.

The Louisville & Nashville Railroad Company competes with the Southern Railway at Decatur, Florence, Sheffield, Tuscumbia, Attalla, Gadsden, Alabama City, Talladega, Calera, Birmingham, Bessemer, Ensley, Selma and Mobile, Ala., Knoxville, Tenn., Jellico, Tenn., and

Middlesboro, Ky.

While at some of these places the Louisville & Nashville Railroad is the stronger, at others the Southern Railway holds the advantageous position. Taking them as a whole, the strength of the two lines is about equal. Southern Railway territory surrounding these junctions is now open to Louisville & Nashville routing through some of the latter's main line junctions. Divisions are also in effect via the Southern Railway to and from these cities themselves. For instance, there are routes between Selma and Nashville via Birmingham and via Calera. Gadsden, Anniston, Talladega and Mobile traffic is open for Louisville & Nashville routing through Birmingham, in connection with the Southern Railway. The maximum revenue, in all instances, can, however, be obtained by the Southern Railway, if routing is through Harriman in connection with the Tennessee Central R. R. Orleans, the Louisville & Nashville competes with the New Orleans & Northeastern R. R. (a part of the Queen & Crescent System) and with the Illinois Central System.

Aside from its single long haul, the Louisville & Nashville Railroad is now able to also compete in connection with the Queen & Crescent through Birmingham, and in connection with the Illinois Central R. R. through Memphis and Milan. It is to the interest of the Queen & Crescent, however, to favor its lines north of Birmingham as far as Emory Gap, Tenn., in connection with the Tennessee Central, instead of the Louisville & Nashville R. R. north of Birmingham, with the traffic which it may control. In the same way, every incentive of the Illinois Central is against its giving up traffic it may control, to the Louisville & Nashville at Memphis or Milan, and to the prejudice of its further haul north of these gateways as far as Hopkinsville.

The Southern Railway, Queen & Crescent, and Illinois Central Systems all have more or less strong working interests with connections, respectively, which are also connections of the Louisville & Nashville. They will be able to influence said connections to permit them to handle for their long hauls, respectively, through Emory Gap, Harriman, or Hopkinsville, traffic given them, instead of giving it up to the Louisville & Nashville Rail-

road.

It is a matter of common knowledge that the Nashville Terminal Company, which supplies virtually all the terminal facilities of the Tennessee Central R. R. in the city of Nashville is owned, not by that line, but by the Illinois Central and Southern Railway, jointly or severally, which fact we may assume lends strongly to the interest those lines each may have in routing traffic via the Tennessee Central Railroad.

The Illinois Central R. R. employs, in various capacities, as freight solicitors, 89 subordinate officials. The Southern Railway, proper, 166 (this does not include the Southern Railway allied interests). The Queen & Crescent System employs 55 freight solicitors. The Tennessee Central R. R., 13. The aggregate of these four is 323. The Louisville & Nashville employs 76 freight solicitors, of various ranks, and the Nashville, Chattanooga &

St. Louis Railway, 44, or an aggregate of 130.

Should reciprocal switching be practiced at Nashville, whereby the Tennessee Central R. R. will have access to all industrial side tracks on the Louisville & Nashville R. R., or those jointly controlled with the Nashville, Chattanooga & St. Louis Railway, extraordinary efforts would be put forth by the soliciting representatives and other officers of the Tennessee Central R. R., to secure as much competitive traffic as possible for and from their competitors' terminals. Inasmuch as the primary revenue interests of the Southern Railway, Queen & Crescent, and Illinois Central will be to secure as much traffic as

they can for their longer and more remunerative routes, the efforts of the Tennessee Central would be ably assisted by the numerous soliciting representatives of said lines. These combined efforts will necessarily meet with a considerable decree of success. As a rule, the "home line" always possesses a measure of strength in the good will of the shippers. The lines of the Illinois Central, Southern Railway and Queen & Crescent cover such a vast amount of territory, that there is a large volume of traffic which is originated by them or which they deliver at stations, local and competitive, reached by their lines. Shippers and receivers on these lines can be much more readily reached by the agents and representatives of said lines, for the purpose of soliciting their traffic or influencing them, than by the representatives of the Louisville & Nashville R. R. or the Nashville, Chattanooga & St. Louis Railway. Shippers and receivers located on the tracks of the latter lines at Nashville, mostly entertain friendly sentiments towards their home lines, nevertheless they are all susceptible to solicitation, and while the representatives of the Louisville & Nashville R. R., as to its shippers hope to continue to receive the major share of their traffic, even under a reciprocal arrangement, we are bound, under the most favorable conditions, to lose a proportion of it.

The estimate hereinabove is based purely on what affiant believes will be the results of the efforts and the serving of separate interests of the principal connections of the Tennessee Central, and takes no account of the influence which ownership of securities in the Tennessee Central by the City of Nashville may have on the situation. The policy of the Nashville City Government has been to use all influence it may have with the shippers and receivers of freight at Nashville to favor the Tennessee Central, because of this ownership, proclamations urging this as a duty on the citizens of Nashville having been made by the Mayor. Should all of the shippers and receivers located on the Louisville & Nashville Railroad served tracks at Nashville accept this advice of the city authorities, 100 per cent of the Louisville & Nashville Railroad's traffic available to competition of the Tennessee Central will be jeopardized. When the city government at Nashville makes contracts for commodities for

which the Tennessee Central may compete, they usually

specify routing over the Tennessee Central Railroad.
(Signed) A. R. Smith.

50 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AL.

State of Tennessee, County of Davidson.

Subscribed and sworn to before me, W. E. McFarland, a Notary Public, in and for the aforesaid county and State, by A. R. Smith, this, the 19th day of April, 1915.

W. E. McFarland, Notary Public.

Davidson County, Tennessee.

Notary Seal.

Said affidavit was endorsed: Filed April 20, 1915. H. M. Doak, Clerk.

On April 20, 1915, the plaintiffs filed the following affidavit of Charles Barham:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD CO.,
NASHVILLE, CHATTANOOGA & St. Louis R'Y,
LOUISVILLE & NASHVILLE TERMINAL Co., - Plaintiffs,

versus

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
CITY OF NASHVILLE,
TRAFFIC BUREAU OF NASHVILLE,
TENNESSEE CENTRAL RAILROAD Co., - Defendants.

I, Charles Barham, make affidavit as follows:

I am forty-eight years of age, reside in Nashville, Tennessee, and have been for the past nine years, General Freight Agent of the Nashville, Chattanooga & St. Louis Railway, and for the past sixteen years have been connected with the Traffic Department of that company in various capacities as Chief Clerk, Assistant General Freight Agent, and General Freight Agent.

I am familiar with the traffic of the Nashville, Chattanooga & St. Louis Railway, with local conditions in the city of Nashville, and with the relations existing between

the Nashville, Chattanooga & St. Louis Railway and its various rail connections. This knowledge enables me to form a reasonably accurate idea of the probable effect upon the traffic of the Nashville, Chattanooga & St. Louis Railway in the event a reciprocal switching arrangement should be made at Nashville, Tennessee, between the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad, as contemplated by the order of the Interstate Commerce Commission in its opinion dated February 1, 1915.

I am of the opinion that a reasonable estimate of the loss to the Nashville, Chattanooga & St. Louis Railway caused by such an arrangement would be twenty per cent of its inbound competitive traffic, and ten per cent of its outbound competitive traffic. By "competitive" is meant that traffic which the Nashville, Chattanooga & St. Louis Railway now hauls into or out of Nashville and West Nashville, Tenn., which could be handled into or out of Nashville or West Nashville by some other line of rail-

way.

Exclusive of freight loaded or unloaded from team tracks, the Nashville, Chattanooga & St. Louis Railway handles into Nashville and West Nashville approximately fifteen thousand, one hundred (15,100) and from Nashville and West Nashville approximately seventeen thousand (17,000) carloads of "competitive" freight per annum. On all this business the approximate average earnings of the Nashville, Chattanooga & St. Louis Railway are \$28.50 per carload, and, therefore, its total earnings on this traffic are substantially \$915,000 per annum, of which approximately \$485,000 is earned on business from Nashville and West Nashville, and \$430,000 on business to Nashville and West Nashville.

The entire business above referred to is "competitive" in the sense herein explained as between the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad, and in the event switching arrangements are entered into, as ordered by the Interstate Commerce Commission, I am of the opinion the Nashville, Chattanooga & St. Louis Railway would lose approxi-

mately:

On havings from Nachrille and	Cars	Revenue
On business from Nashville and West Nashville On business to Nashville and		\$48,5 00
West Nashville	3,020	86,000
Total	4,720	\$134,500

After careful inquiry among the shippers located thereon, and from the best information I am able to obtain, I believe the Tennessee Central Railroad now handles for the receivers and shippers located exclusively on its terminals, approximately 450 carloads from and 2,500 carloads into the city of Nashville, or an approximate total of 2,950 carloads of competitive traffic per annum.

I am of the opinion that of the above total number of cars now handled by the Tennessee Central Railroad from and into the city of Nashville, the Nashville, Chattanooga & St. Louis Railway should, with reciprocal switching arrangements, be able to control substantially the same percentage as it would itself lose to the Tennessee Central of the business now handled by the Nashville, Chattanooga & St. Louis Railway, or twenty per cent inbound and ten per cent outbound. Should these expectations be realized, a reciprocal switching arrangement would control to the Nashville, Chattanooga & St. Louis Railway 545 carloads now handled by the Tennessee Central Railroad, on which the average earnings of the Nashville, Chattanooga & St. Louis Railway should be, as stated, \$28.50 per carload, or, in round figures, \$15,500. But as the Nashville, Chattanooga & St. Louis Railway would, in my opinion, lose substantially \$134,500 on the business it now handles, the total loss to the Nashville, Chattanooga & St. Louis Railway because of such an arrangement would be approximately \$118,000 per annum.

A review of the circumstances and conditions under which the solicitation of the Nashville, Chattanooga & St. Louis and other railways is now conducted is necessary for an appreciation of the above estimate, as, also, an understanding of the general territory which would, through the operation of a switching agreement, become competitive.

There would become competitive as between the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad all traffic now handled by the former company when originating at or beyond its junctions

with other lines of railway, as follows:

Atlanta, Georgia. Rome, Georgia. Dalton, Georgia. Chattanooga, Tennessee. Gadsden, Alabama.

Attalla, Alabama. Huntsville, Alabama. Stevenson, Alabama. Paducah, Kentucky. Union City, Tennessee. Gibbs, Tennessee. Martin, Tennessee. Jackson, Tennessee. Memphis, Tennessee.

None of this traffic is at this time competitive as between the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad when shipped to or from firms and persons located on the exclusive Nashville, Tenn., Terminal of the former road, but with a reciprocal switching arrangement in force at Nashville, the Nashville, Chattanooga & St. Louis Railway would immediately meet the following additional competition which it does not now face:

At Atlanta that of the Southern Railway and Central of Georgia Railroad, both having their own rails to Chattanooga, and who would thereby be enabled to work via Chattanooga, Tenn., and Harriman, Tenn., in connection with the Tennessee Central Railroad. The earnings of both the Southern Railway and of the Central of Georgia Railroad would be substantially increased via this route as against the delivery of the traffic to the Nashville. Chattanooga & St. Louis Railway at Atlanta, Ga.

From Cartersville, Ga., the Seaboard Air Line would compete via Rockmart, Ga., Southern Railway, Harriman

and the Tennessee Central.

From Rome, Ga., the Southern Railway and the Central of Georgia would compete via the route described as from Atlanta.

From Dalton, Ga., the Southern Railway would com-

pete via the same route.

From Chattanooga, Tenn., the Cincinnati, New Orleans & Texas Pacific Railroad would compete via Harri-

man and the Tennessee Central Railroad.

From Gadsden and from Attalla, Ala., the Alabama Great Southern Railroad would compete via Chattanooga, Tenn., Harriman and the Tennessee Central Railroad.

From Huntsville, Ala., the Southern Railway would compete via Chattanooga, Tenn., Harriman and the Tennessee Central Railroad.

From Paducah, Ky., the Illinois Central Railroad would compete via Hopkinsville, Ky., and the Tennessee Central Railroad.

From Union City, Tenn., the Mobile & Ohio Railroad would compete via Rives, Tenn., Illinois Central Railroad, Hopkinsville, Ky., and the Tennessee Central Railroad.

From Gibbs and Martin, Tenn., the Illinois Central Railroad would compete via Hopkinsville, Ky., and the Tennessee Central Railroad.

From Jackson, Tenn., the Mobile & Ohio Railroad and the Illinois Central Railroad would compete, the one using the Illinois Central Railroad from Rives, Tenn., the other over its own rails to Hopkinsville, Ky., thence Tennessee Central Railroad.

From Memphis, Tenn., the Illinois Central Railroad would compete via Hopkinsville, Ky., and the Tennessee

Central Railroad.

Not only would this additional competition be faced by the Nashville, Chattanooga & St. Louis Railway from the cities named, but also on all business from beyond passing through these junctions, and this business is of extreme importance to it; for example, such business as now comes from the west, from Chicago, St. Louis, Kansas City, Minneapolis, St. Paul, from the Pacific Coast, etc., via Cairo, Martin and the Nashville, Chattanooga & St. Louis Railway could come via Cairo, Hopkinsville, and the Tennessee Central Railroad. Moreover it would be to the immediate interest of the connections of the Nashville, Chattanooga & St. Louis Railway to use the routes via either Hopkinsville, Ky., or Harriman, Tenn., as thereby their hauls would be lengthened and earnings increased. Because of these new routes and lengthened hauls the Nashville, Chattanooga & St. Louis Railway would be compelled to face a largely increased competition with important and powerful railways by whom large soliciting forces are employed and whose methods are aggressive and thoroughly organized. Even if the Nashville, Chattanooga & St. Louis Railway could successfully withstand this added competition it would entail a severe expense for which it would receive no compensation over and above its present earnings.

In short, as will be seen, the business now delivered the Nashville, Chattanooga & St. Louis Railway at the various junction points named could be handled via the lines from which it is now received by the Nashville, Chattanooga & St. Louis Railway through other junctions yielding them longer hauls and greater revenue, to a connection with the Tennessee Central Railroad either at Harriman, Tenn., or Hopkinsville, Ky. But while those diversions would entail substantial loss to the Nashville, Chattanooga & St. Louis Railway, they would be without gain to the shippers and receivers, inasmuch as the present rates of freight would not be reduced nor the present service made better thereby.

The loss estimated above, \$134,500 per annum, as approximately that which the Nashville, Chattanooga & St. Louis Railway would, in my opinion, incur through the diversion from it to the Tennessee Central Railroad of business moving to and from Nashville and West Nashville, is the gross revenue of the former, and to find the actual or net loss there must be deducted therefrom the

cost of handling the business.

The operating ratio, or percentage of operating cost to revenue, of the Nashville, Chattanooga & St. Louis Railway is, at this time, about seventy-nine per cent. But this operating ratio includes many items of expense which could not be reduced proportionately, if at all, should the Nashville, Chattanooga & St. Louis Railway lose to the Tennessee Central Railroad the business herein referred to. Practically the only reduction in expense possible thereby would be an amount equal to the out-ofpocket haulage cost, and this, in my opinion, is not more than thirty per cent of the revenue. So estimated the actual net loss of the Nashville, Chattanooga & St. Louis Railway on business diverted from it to the Tennessee Central Railroad would be about \$95,000 and against this should be credited approximately \$10,850 (70% of \$15,000) profit earned on that business now handled by the Tennessee Central Railroad which the Nashville, Chattanooga & St. Louis Railway would, through the operation of a reciprocal switching agreement, likely control. Calculated as above the loss of the Nashville, Chattanooga & St. Louis Railway over and above any gain it might receive by reason of losses incurred by the Tennessee Central Railroad, would be not less than \$84,150 per annum, and this I believe to be a conservative estimate, and if anything under rather than over stated.

The conditions feared by the Nashville, Chattanooga & St. Louis Railway are not those of better service or lower rates via the Tennessee Central, for neither of these will be had, but the opening of gateways via which the earnings of the present connections of the Nashville, Chattanooga & St. Louis Railway will be increased; coupled with the sentimental preference which may be expected shown by the receivers and shippers of Nash-

ville for the Tennessee Central. Many appeals to these receivers and shippers have already been made based upon the stock ownership of the city in that line and a proclamation has even been issued by the Mayor of Nashville urging the use of the Tennessee Central. These facts are well known and, I believe, of record in this case.

CHARLES BARHAM.

(SEAL.) Subscribed and sworn to before me at Nashville, Tenn., on the 19th day of April, 1915.

JIM Scott,

Notary Public.

Affidavit was endorsed: Filed April 20, 1915. H. M. Doak, Clerk.

On April 20, 1915, the plaintiffs filed the following affidavit of C. C. Gebhard:

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY, ET AL., VS.

UNITED STATES OF AMERICA, ET AL.

AFFIDAVIT.

Affiant, C. C. Gebhard, states that he is thirty-six years of age, that he resides in Louisville, Ky., and is the Chief Clerk of the Traffic Department of the Louisville & Nashville Railroad Company. He says that said Traffic Department has charge of the issuance and distribution of new tariffs and that, speaking from his experience, it will be necessary, if new tariffs are to be issued showing changes in the switching arrangements at Nashville, Tenn., for them to be furnished to the printer not later than April 26, 1915, in order for them to be published and filed for the use of the Interstate Commerce Commission and the public on or before June 1, 1915, the date required by the Commission's order, that is,

thirty days before June 1st, the effective date of said order.

He says that in order to make legal publication of said tariffs it will be necessary for the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway to distribute them to all of their local freight agents, general division and soliciting representatives, as well as to connecting lines throughout the country generally and that he has made investigation of the lists of persons to whom these distributions will have to be made and he says that such lists include approximately 1,900 persons.

He further says that in the event a temporary restraining order is not issued herein, but that later on an interlocutory injunction should be issued, the plaintiffs would be put to the expense and labor of cancelling said new issue of tariffs and that the publication and distribution generally and particularly of these tariffs would be greatly inconvenienced and hampered because of the confusion and complications which would necessarily arise out of the issuance of the new tariffs and their early can-

cellation and the reissuance of the old ones.

(Signed) C. C. GEBHARD.

STATE OF TENNESSEE, COUNTY OF DAVIDSON.

Subscribed and sworn to before me by C. C. Gebhard this April 19, 1915. My commission expires July 18, 1918.

W. E. McFarland.

Notary Seal.

Affidavit for plaintiff of C. C. Gebhard. Filed April 20, 1915. H. M. Doak, Clerk.

Said affidavit was endorsed: Filed April 20, 1915, H. M. Doak, Clerk.

On April 20, 1915, the plaintiffs filed a certified copy of the record and proceedings before the Interstate Commerce Commission, which was endorsed:

Filed April 20, 1915.

Said record is not repeated here, as it is the same as the Exhibit with the Petition, and is contained in Volumes II and III of this transcript of record.

On April 20, 1915, the following order on hearing was entered:

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

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UNITED STATES OF AMERICA, ET AL.

The plaintiffs having filed their petition herein to enjoin the order of the Interstate Commerce Commission, in the City of Nashville, et al., v. Louisville & Nashville Railroad Company, et al., I. C. C. Docket 6484, and having made application to the Honorable Edward T. Sanford, Judge of the United States District Court for the Middle District of Tennessee for an injunction pendente lite and for a temporary restraining order, and for an early hearing on said application, he thereupon immediately called to his assistance to hear and determine the case, the Hon. John W. Warrington, United States Circuit Judge for the Sixth Judicial Circuit, and the Hon. John E. McCall, Judge of the District Court of the United States for the Western District of Tennessee, and fixed Monday, April 19, 1915, at 9 o'clock A. M., in the United States District Courtroom at Nashville, Tennessee, as the time and place for hearing the said application, of which due notice was given to defendants.

And thereupon on that day the said United States District Court convened and the hearing of said application was continued to April 20, 1915, at the same place at 9:30 o'clock A. M.

And thereupon the said three judges convened the United States District Court for the Middle District of Tennessee, at Nashville, Tennessee, on Tuesday, April 20, 1915, at 9:30 o'clock A. M. in pursuance of the statute in such case made and provided, all of the parties being present and represented by their respective counsel.

Thereupon came the plaintiffs and filed a certified copy of the transcript of evidence heard before the Interstate Commerce Commission, and also the affidavit of A. R. Smith, Chas. Barham and C. C. Gebhard, to which affidavits and the filing thereof, counsel for the defendants, United States of America and Interstate Commerce Commission, objected as immaterial and irrelevant and as not bearing on the power of the Interstate Commerce Commission to enter the order.

And thereupon the said cause came on for hearing on the said applications, and the same were argued by counsel and submitted to the court, and taken under advisement.

Leave was granted to each and any party to file briefs within five days from the date thereof.

Entered on April 20, 1915. Equity Journal A, pages 146-7.

On September 18, 1915, the court filed the following per curiam opinion:

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

vs. No. 30. In Equity.

United States of America, et al.

Before WARRINGTON, Circuit Judge, and McCALL

and SANFORD, District Judges.

PER CURIAM. The Louisville & Nashville Railroad Company, the Nashville, Chattanooga & St. Louis Railway Company and the Louisville & Nashville Terminal Company, hereinafter called the Louisville & Nashville, The Nashville & Chattanooga and the Terminal Company, respectively, having filed a petition against the United States, the Interstate Commerce Commission, and others, to set aside a certain order made by the Commission in the matter of the switching of competitive traffic at Nashville, Tennessee, entered a motion for an interlocutory injunction restraining the enforcement of this order pendente lite. This motion was heard by three judges, as provided by the Act of October 22, 1913, c. 32, 38, Stat. 228; the hearing being had upon the petition and exhibits, the answers of certain of the defendants, and affidavits filed by the petitioners on the question of ir-reparable injury. There were also heard motions of the United States and of the Commission to dimisss the petition, based, in substance, on want of equity upon its face.

The order sought to be enjoined was made by the Commission in proceedings instituted by the City of Nashville and its Traffic Bureau, wherein, among other things, they

complained, in effect, that the rates and practices of the Louisville & Nashville and the Nashville & Chattanooga affecting the interchange and switching of competitive car traffic at Nashville, established by agreement and concert of action among the petitioners, subjected competitive carload traffic received and delivered at Nashville from and to the Tennessee Central Railroad Company, hereinafter called the Tennessee Central, to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Interstate Commerce Act, and prayed that they be required to desist from such violation; and for general relief. Answers having been filed and evidence taken, the Commission filed its written report, containing its findings of fact and conclusions thereon, which were, in substance: that the petitioners refuse to switch competitive traffic to and from the Tennessee Central at Nashville, upon the same terms as non-competitive traffic, while interchanging both kinds of traffic on the same terms with each other; and that, since the interchange of traffic between the petitioners' lines and the Tennessee Central does not differ substantially from the conditions of interchange between the petitioners' own lines, this is unjustly discriminatory. City of Nashville v. Louisville & Nashville Railroad Co., 33 I. C. C. 76. And thereupon the Commission issued the order in question, requiring that the petitioners should cease on or before a specified date, and thereafter abstain, from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central at Nashville on the same terms as interstate non-competitive traffic, while interchanging both kinds of traffic on the same terms with each other; and that they should, on or before such date, establish, publish and thereafter maintain and apply to the switching of interstate traffic to and from the tracks of the Tennessee Central at Nashville, rates and charges which should not be different from those which they contemporaneously maintain with respect to similar shipments from their respective tracks in such city.

The petitioners, having exhibited with their petition a transcript of all the evidence before the Commission, earnestly insist in support of their motion for an interlocutory injunction: that the conclusions of the Commission are not supported by any substantial evidence and are contrary to the indisputable character of the evidence; that, as shown by the undisputed evidence, the Terminal Company does not handle any traffic or switch any freight at all; that, as shown by the indisputable

character of the evidence, the Louisville & Nashville and the Nashville & Chattanooga do not interchange traffic with or switch traffic for each other, but each does its own switching, under a valid joint arrangement, which, in effect, merely gives them reciprocal trackage rights over each others property and is not subject to regulation by the Commission under the Interstate Commerce Act; and, further, that this arrangement is maintained under circumstances and conditions wholly dissimilar to those involved in the switching of traffic to and from the Tennessee Central and hence does not constitute discrimination. On the other hand, the defendants contend: that it appears from the petition and the testimony before the Commission exhibited therewith, that the conclusions of the Commission are supported by substantial evidence and are not contrary to the indisputable character of the evidence; that they involve no error of law; and that hence they are not subject to review by the court in this proceeding, and the injunction should accordingly be denied and the petition dismissed for want of equity upon its face.

It is well settled, on the one hand, that a conclusion of the Commission upon a question of fact, such as the reasonableness of a rate or the giving of a preference, whose correctness depends wholly upon a consideration of the weight to be given evidence before it, will not be reviewed by the court; and, on the other hand, that a conclusion which plainly involves, under the undisputed facts, an error of law, or which is shown to be supported by no substantial evidence or to be contrary to the indisputable character of the evidence, thereby likewise involving an error of law, will be so reviewed. Pennsylvania Co. v. United States, 236 U. S. 351, 361; Louisville Railroad v. United States (D. C.), 216 Fed. 672, 679 (three judges); and cases therein cited.

The material facts established by the undisputed evidence before the Commission and set forth, in the main, in its detailed findings, may be thus summarized:

Nashville is traversed and served by three railroads: The Louisville & Nashville, extending through from the north to the south; the Nashville & Chattanooga, from the west to the southeast; and the Tennessee Central, from the northwest to the east. The Louisville & Nashville and the Nashville & Chattanooga entered this city many years ago; the Tennessee Central in recent years. The Louisville & Nashville and the Nashville & Chattanooga are natural competitors for Nashville traffic; and each competes for such traffic with the Tennessee Central. All

three railroads have extensive terminals in the city, with depots, yards, and tracks; their respective tracks reaching industries located mainly in different sections of the city, but partly in the same sections. The tracks of the Tennessee Central are connected with those of the Nashville & Chattanooga by an interchange track at Shops Junction, in the western section of the city, and with those of the Louisville & Nashville by an interchange track at Vine Hill, just outside the city on the south. The tracks of the Louisville & Nashville and the Nashville & Chattanooga are connected at several points, but principally in the joint terminals operated by them in the center of the city, as hereinafter set forth. The entire situation is fully shown by a map accompanying the report of the Commission. (38 I. C. C. Sup. Opp., p. 78.)

Originally the northern and southern lines of the Louisville & Nashville had separate terminals in different sections of the city, and the Nashville & Chattanooga, a terminal midway between them; there being no track connections in the city between any of these different terminals. In 1872, by agreement between the companies, the Louisville & Nashville acquired, for the annual rental of \$18,000 and other valuable considerations, perpetual trackage rights connecting its two terminals with each other and with the terminal of the Nashville & Chattanooga; this agreement also contemplating the construction of a union passenger station on the depot grounds of

the Nashville & Chattanooga.

In 1880 the Louisville & Nashville began to acquire the capital stock of the Nashville & Chattanooga, and now

owns slightly more than 71 per cent thereof.

In 1893, to facilitate the construction of the proposed union station and other terminal facilities, the Louisville & Nashville and the Nashville & Chattanooga caused their co-petitioner, the Terminal Company, to be organized under the general incorporation laws of Tennessee. These laws give terminal companies the right to lease their property and terminal facilities to any railroad company utilizing them, upon such terms and time as may be agreed upon by the parties. The Louisville & Nashville owns all of the capital stock of the Terminal Company.

On April 27, 1896, the Louisville & Nashville and the Nashville & Chattanooga, by separate indentures, leased to the Terminal Company for 999 years all of the property and railroad appurtenances thereon which they severally owned or controlled within or in the immediate vicinity of the original depot grounds of the Nashville & Chattanooga. In each of these leases the amount of the

stipulated rental was left blank; the Terminal Company, however, covenanting to keep the premises in repair and

to pay all accruing taxes.

On June 15, 1896, the Terminal Company leased to the Louisville & Nashville and the Nashville & Chattanooga. jointly, for 999 years, all the premises acquired by it under the former leases from them, together with all other premises which it had subsequently acquired or might thereafter acquire. Under this lease the Terminal Company covenanted to construct upon the leased premises all passenger and freight buildings, tracks and other terminal facilities suitable and necessary for such railroads entering at Nashville as might contract with it therefor. and to pay all taxes and insurance upon the leased premises and the improvements to be constructed thereon; while the two railroad companies agreed to pay it annually as rental for the leased premises and the improvements thereon, 4% upon the actual cost of the acquisition of the premises and the construction of the improvements, in addition to the amount of the taxes and insurance; and further agreed to keep the leased properties in repair.

On June 21, 1898, the Terminal Company entered into a contract with the City of Nashville whereby it agreed to construct a union passenger station on the premises covered by the above-mentioned leases, with freight depots, tracks, switches, etc., and viaducts over its tracks and certain new streets and extensions of streets; the city agreeing to secure the condemnation of land, close certain streets, and erect approaches to certain of the viaducts. The Louisville & Nashville and the Nashville & Chattanooga, in consideration of the benefits to be received by them from the proposed improvements, guaranteed the performance of the obligations of the Terminal Company under the contract. This contract made no

provisions for future railroads.

The improvements agreed upon, including the passenger station, depot, tracks, etc., were duly made, being completed in 1900. The tracks thus constructed by the Terminal Company are connected with those of the Louisville & Nashville and the Nashville & Chattanooga, but

not with those of the Tennessee Central.

The contribution of the city to these improvements cost approximately \$100,000; while the total cost of the Terminal Company was considerably in excess of two million dollars. To enable the Terminal Company to acquire the additional properties which it had purchased in addition to those leased to it by the two railroads, and

to construct these improvements, the Louisville & Nashville and the Nashville & Chattanooga from time to time advanced to it the necessary funds. To repay these advances the Terminal Company executed a mortgage securing an authorized issue of three million dollars of bonds. These bonds were guaranteed by the two railroads, under authority given by the Tennessee laws relating to terminal companies. Of these authorized bonds, \$2,535,000 were actually issued, the proceeds of which were used to repay the advances made by the railroads.

During the construction of these terminal facilities the Louisville & Nashville and the Nashville & Chattanooga continued, as theretofore, to operate their respective terminals independently, under reciprocal switching arrangements, by which each switched cars for the other to and from their local destinations, at a uniform charge of \$2.00 per car; this switching charge being absorbed on competitive traffic by the railroad having the transportation haul, while on non-competitive traffic it was paid by the shipper or consignee.

On August 15, 1900, shortly after the completion of the terminal facilities by the Terminal Company, the Louisville & Nashville and the Nashville & Chattanooga, being then the only two railroads entering Nashville, as a matter, primarily at least, of economy in the operation of terminal facilities, entered into an agreement under which they have since maintained and operated joint terminal facilities at Nashville, the effect of which is the underlying matter of controversy in this case. The essential provisions of this agreement are as follows:

The two railroads created an unincorporated organization, styled in the agreement the "Nashville Terminals," and hereinafter called the Terminals, for the maintenance and operation of terminals at Nashville, embracing in such organization all the properties, buildings, tracks, and terminal facilities leased to them by the Terminal Company, together with certain other individually owned tracks which they severally contributed and attached to said terminals, consisting of 8.10 miles of main and 23.80 miles of side track contributed by the Louisville & Nashville, and 12.15 miles of main and 26.37 miles of side tracks contributed by the Nashville & Chattanooga. The agreement further provided: (a) That the entire properties thus included within the terminals should be maintained and operated, as such, under the management of a Board of Control, consisting of a Superintendent of the Terminals and the General Managers of the two railroads, the operation of the Terminals to be

under the immediate control of the Superintendent, who should appoint, subject to the approval of the Board, a Station Master, Master of Trains, and other designated officers, each of whom should have a staff of employes for the conduct of his department; (b) that the expenses of maintaining and operating the Terminals should be apportioned between the two railroads as follows; passenger service expenses (including all expenses of the union passenger station) in proportion to the number of passenger train cars and locomotives handled by the Terminals for each; siding expenses (to be ascertained on the basis of the number of hours that vard engines were engaged in switching to and from house and private sidings, and bulk or team tracks, as compared with the total number of hours that they were engaged in all classes of service) in proportion to "the total number of cars placed on and withdrawn from house and private sidings, bulk or team tracks (by the Terminals) for each" railroad: train yard expenses, in proportion to the number of all cars and train locomotives received and forwarded by the Terminals for each; and general expenses, in proportion to the average percentages of the three other expense accounts; provided, that before such apportionment of expenses, there should be deducted from the aggregate expenses all moneys received by the Terminals for room rents, restaurant and news-stands privileges, etc., and services rendered any other persons; (c) that the separate freight stations and appurtenant tracks of each railroad and the tracks allotted to each for receiving and delivering bulk freights, should be maintained and operated by the Terminals for each of them direct, and the expenses thereof charged directly to each; a like provision being made in reference to the operation of the terminal roundhouse for the Louisville & Nashville alone: (d) that each railroad should set apart and allot to the use of the Terminals, switching engines adequate to the work of switching and pulling trains in and about the Terminals, corresponding in efficiency to the proportion of work performed for each; which should be maintained and kept in repair by the Terminals and for which it should pay the railroads four per cent annually upon their valuation at the time of allotment; and (e) that the rights, privileges and uses of all the property in the Terminals by the respective railroads, should be "the same, equal and joint, and none other," except only as to the bulk tracks, etc., operated for each separately.

In operating under this agreement all the work of breaking up incoming freight trains of both railroads

after they come into the central yards of the Terminals, and of collecting and making up outgoing freight trains for both railroads before they leave such yards, is performed by the Terminals. Thus, when an incoming freight train comes in on the line of either railroad into the central yards, all cars destined for industries located within the Terminals, either on the tracks jointly leased to the Terminal Company or on the tracks of either railroad otherwise included within the Terminals, are switched by the Terminals to such local destination, without distinction as to the particular tracks on which such industries are located; and, conversely, freight cars loaded at industries located on any of such tracks for transportation out of Nashville on the line of either railroad, are switched by the Terminals to the central yards and made up into the outgoing train. In other words, the entire switching service in reference to either the incoming or the outgoing freight trains of each railroad to and from the separate and joint tracks of both railroads, is performed by the Terminals, acting as joint agent of the two railroads under the Terminal agreement. However, in accordance with this agreement, the only direct charge for such switching service is, in effect, made against the railroad having the transportation haul, in accordance with the provision that the siding expenses shall be apportioned between the two railroads in proportion to "the total number of cars placed on and withdrawn from house and private sidings, bulk and train tracks, for each of the parties." Obviously, however, this apportionment of siding expenses does not represent the entire actual cost incident to the switching services, as it does not include any part of the general expenses and fixed charges of the Terminal, which are apportioned between the two railroads upon a different basis, as provided by the agreement.

The interchange track between the Nashville & Chattanooga and the Tennessee Central at Shops Junction is within the switching limits of the Terminals under this agreement, but the interchange track between the Louisville & Nashville and the Tennessee Central at Vine Hill

is outside of these switching limits.

On December 3, 1902, the Terminal Company, the Louisville & Nashville, and the Nashville & Chattanooga entered into an agreement, reciting that the two leases of April 27, 1896, from the railroads to the Terminal Company had been cancelled and abrogated; modifying the lease of June 25, 1896, from the Terminal Company to the railroads, so that thereafter it should only include

certain tracks and parcels of land that had been directly acquired by the Terminal Company, and should be otherwise rescinded and abrogated and the properties of the railroads otherwise respectfully restored as they were prior to the lease, subject only to the mortgage that had been executed thereon by the Terminal Company to secure its issue of bonds; reducing the term of the lease to 99 years; and modifying in certain respects the provisions of the lease as to the rental to be paid.

The Terminal tariffs of both railroads publish service by the Terminals and provide that "there is no switching charge to or from locations on tracks of the Nashville Terminals, within the switching limits, on freight traffic, carloads, from or destined to Nashville" over either railroad, "regardless of whether such traffic is from or des-

tined to competitive or non-competitive points."

The Tennessee Central entered Nashville in 1901-2, after strong opposition from the Louisville & Nashville, and leased its terminal facilities, consisting of a passenger station, freight depots, tracks, etc., from another Tennessee railroad terminal corporation that had been or-

ganized in 1893.

Prior to 1907 neither the Louisville & Nashville or the Nashville & Chattanooga would interchange traffic with the Tennessee Central at Nashville or any other point of connection. In that year, however, they both began to interchange with the Tennessee Central at Nashville all non-competitive traffic, exclusive of coal traffic, at the rate of \$3.00 per car; non-competitive Nashville traffic being defined as traffic between Nashville and points reached only by one railroad into Nashville or points served by two or more railroads into Nashville for which, however, one railroad can maintain rates which the others can not meet. This interchange of non-competitive traffic between both the Louisville & Nashville and the Nashville & Chattanooga was and is effected by the connection between the Tennessee Central and the Nashville & Chattanooga at Shops Junction, there being no direct connection between the Tennessee Central and the Louisville & Nashville.

On December 9, 1913, upon complaint by the City of Nashville and others, the Commission found that the Louisville & Nashville and the Nashville & Chattanooga switched all traffic for each other at Nashville but refused to switch coal to and from the Tennessee Central except at a prohibitive rate, thereby unjustly discriminating against coal to and from the Tennessee Central in favor of coal to and from each other's lines, and entered an

order requiring the Louisville & Nashville and the Nashville & Chattanooga to abstain from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the Tennessee Central at Nashville from that maintained with respect to similar shipments from and to their respective tracks. The Louisville & Nashville and the Nashville & Chattanooga thereupon filed a petition in this court seeking to restrain the execution of this order and applied for an interlocutory injunction, which was denied by this court. Louisville Railroad v. United States (D. C.), 216 Fed. 672 (three judges). This decision was recently affirmed, on appeal, by the Supreme Court. Louisville Railroad v. United States, 238 U. S. 1. This order, however, was interpreted by both railroads as relating exclusively to non-competitive coal, and while they have since that time switched non-competitive coal to and from the Tennessee Central at \$3.00 per car, the same as other non-competitive traffic, they have not changed their former practice relative to competitive coal.

A table introduced in evidence by the petitioners (33 I. C. C., at p. 83), shows the average cost to the Terminals of handling city freight traffic to be, exclusive of fixed charges, \$4.128 per car. The Commission was of opinion that, while these figures might not be absolutely correct, they were not shown to be substantially incorrect, and that the charge of \$3.00 per car for switching Tennessee Central non-competitive traffic was not shown to be unreasonably high; a conclusion in which we entirely concur.

The Louisville & Nashville will switch competitive coal and other competitive traffic at Nashville to and from the Tennessee Central but only at its local rates, such interchange being usually effected through the agency of the Terminals, at Shops Junction, over the rails of the Nashville & Chattanooga. For a while the Nashville & Chattanooga would in like manner perform the same switching service to and from the Tennessee Central at its local rates, its published terminal tariff of December 14, 1913, expressly providing that such local rates would apply on competitive traffic from and destined to the Tennessee Central. Since January 25, 1914, however, shortly after the complaint in this case was filed, its terminal tariff has provided that competitive traffic will not be switched to and from the Tennessee Central, and ne local rate applicable thereto has been published. The terminal tariff of the Tennessee Central provides that Louisville & Nashville and Nashville & Chattanooga competitive traffic will be switched at its local rates. The local rates applied to

such switching by the Louisville & Nashville total from \$12 to \$36 per car; by the Nashville & Chattanooga from \$7 to \$36 per car; and by the Tennessee Central from \$5 to \$36 per car. These rates are virtually prohibitive. The Tennessee Central favors their reduction; but will not reduce its rates until the other railroads do likewise.

The cost to the Terminals of switching competitive Tennessee Central traffic is the same as the cost of switching non-competitive. The Louisville & Nashville interswitched competitive and non-competitive traffic on the same terms with other carriers at Memphis, Tenn., Birmingham, Ala., and several other points. The Nashville & Chattanooga interswitches both kinds of traffic with all other carriers at all connection points at the same rates, except with the Tennessee Central at Nashville; having had in effect at Lebanon, Tenn., where it also connects with the Tennessee Central, a switching charge of \$2 per car for both kinds of traffic since November 14, 1914.

The physical conditions surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, on the one hand, and the Tennessee Central, on the other, in reference to the number and location of industries, the switching movements, involved, and the like, are set forth in detail in the report of the Commission (33 I. C. C., at p. 86). Without restating them here, it is sufficient to say that we entirely concur in the finding of the Commission that the physical conditions of interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga and the Tennessee Central are not shown to differ substantially from the conditions of interchange between the lines of the Louisville & Nashville and the Nashville & Chattanooga, and that, moreover, none of the conditions relating to the switching Tennessee Central traffic appear to differ materially from the conditions of interchange between the lines of the Louisville & Nashville and the Nashville & Chattanooga prior to the establishment of the Terminals.

Upon the foregoing facts, we have, after careful con-

sideration, reached the following conclusions:

The operation jointly carried on by the Louisville & Nashville and the Nashville & Chattanooga under the Terminals agreement is not a mere exchange of trackage rights to and from industries on their respective lines at Nashville, under which each does all of its own switching at Nashville and neither switches for the other. It is, on the contrary, in substance and effect, an arrangement under which the entire switching service for each rail-

road over the joint and separately owned tracks is performed jointly by both, operating as principals through the Terminals as their joint agent; each railroad, as one of such joint principals, hence performing through such agency switching service for both itself and the other And the fact that the charge for such joint switching service is made on an approximately proportionate basis of actual cost, exclusive of fixed charges, against the railroad having the transportation haul, does not, in our opinion, change the underlying and dominant fact, that the switching service itself is performed by both railroads jointly, that is by each railroad operating as a joint principal through the means of the joint agency; the apportionment of the expenses relating only to the payment for the service and not to the joint performance of the service itself. And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely concur in the conclusion of the Commission that such joint switching operation "is essentially the same as a reciprocal switching arrangement," constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of Section 3 of the Interstate Commerce Act. That each railroad does not separately switch for the other, but that such switching operations are carried on jointly, is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers, could be easily put beyond the reach of the Act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching. trolling test of the statute, however, lies in the nature of the work done, rather than in the particular device employed or the names applied to those engaged in it. by analogy, United States v. Chicago Railroad, 237 U. S. 410, 413.

Being, in effect, a reciprocal switching operation carried on by the Louisville & Nashville and the Nashville & Chattanooga, constituting a facility for the interchange of traffic between these two railroads, it necessarily follows, under Section 3 of the Interstate Commerce Act, that equal facilities must be afforded all other lines for like interchange of traffic, without discrimination: and, that, under Section 15 of the Act, the Commission is authorized to require the railroads performing such reciprocal service to desist from any discriminatory service in respect to such switching operations. Pennsylvania Co. v. United States, 236 U. S. 351; Louisville Railroad v.

United States (U. S.), sup. at p. 20; Louisville Railroad

v. United States (D. C.), sup., at p. 683.

And in view of the fact that the physical conditions surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, on the one hand, and the Tennessee Central, on the other, are not substantially different from those surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, and that the cost to the Louisville & Nashville and the Nashville & Chattanooga of switching competitive Tennessee Central traffic is the same as that of switching its non-competitive traffic, we entirely concur in the conclusion of the Commission that the refusal of the Louisville & Nashville and the Nashville & Chattanooga to switch competitive traffic to and from the Tennessee Central on the same terms as non-competitive traffic, while interchanging both kinds of traffic on the same terms with each other, is unjustly discriminatory. Such discrimination is not, in our opinion, obviated by the fact that the joint switching operation of the Louisville & Nashville and the Nashville & Chattanooga involves the use of the joint Terminals which they have constructed at great expense, or the fact that under the Terminals agreement they contribute to the expense of maintaining the Terminals and carrying on their switching operations in the manner hereinbefore set forth. In Louisville Railroad v. United States (U. S.) supra, in which many of the facts hereinbefore set forth, appeared in the report of the Commission, which had found, as a fact, that the Louisville & Nashville and the Nashville & Chattanooga switched for each other, the Supreme Court, affirming the decree of this court, said:

"Disregarding the complication arising out of joint ownership and the fact that each of the appellants switches for the other, it will be seen that the Commission is not dealing with an original proposition, but with a condition brought about by the appellants themselves. Under the provisions of the Commerce Act (24 Stat. 380) the reciprocal arrangement between the two appellants would not give them a right to discriminate against any person or 'particular description of traffic.' For, Section 3 requires railroad companies to furnish equal facilities for the interchange of traffic between their respective lines 'provided that this should not be construed as requiring any such common carrier to give the use

of its tracks or terminal facilities to another carrier engaged in like business.' If the carrier, however, does not rest behind that statutory shield but chooses voluntarily to throw the Terminals open to many branches of traffic, it to that extent makes the yard public. Having made the yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of Section 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. The carriers can not say that the yard is a facility open for the switching of cotton and wheat and lumber but can not be used as a facility for the switching of coal. Whatever may have been the rights of the carriers in the first instance; whatever may be the case if the yard was put back under the protection of the proviso to Section 3, the appellants can not open the yard for most switching purposes and then debar a particular shipper from privilege granted the great mass of the public. In substance that would be to discriminate not only against the tendering railroad, but also against the commodity which is excluded from a service performed for others. * * * In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business. As long as the yard remained open and was used as a facility for switching purposes the Commission had the power to pass an order-not only prohibiting discrimination-but requiring the appellants to furnish equal facilities 'to all persons and corporations without undue preference to any particular class of persons.""

And such discrimination being shown, we think it clear, under the provisions of the Interstate Commerce Act and the authorities above cited, the Commission is clearly authorized to require the Louisville & Nashville and the Nashville & Chattanooga to desist from such discrimination, and to establish and maintain a practice in regard thereto which shall be non-discriminatory.

The order made by the Commission requires the Louisville & Nashville and the Nashville & Chattanooga to desist from maintaining (a practice whereby they refuse to interchange interstate competitive traffic to and from the tracks of the Tennessee Central at Nashville on the same terms as interstate non-competitive traffic, while interchanging both kinds of said traffic with each other on the same terms; and to establish, publish, maintain and apply to the switching of interstate traffic to and from the Tennessee Central tracks rates and charges with shall not be different from those which they contemporaneously maintain with respect to similar shipments from their respective tracks in said city). We find in the record substantial evidence sustaining the conclusions of the Commission on which this order is based; and are of the opinion that, on the facts established by the evidence. this order involved no error of law, and is clearly within the power of the Commission. It is, in our opinion, not invalid as requiring the Louisville & Nashville and the Nashville & Chattanooga to give the use of their tracks and terminal facilities to the Tennessee Central within the meaning of the proviso contained in Section 3 Interstate Commerce Act, or as involving transportation rather than switching and requiring the establishment of a joint rate and through route, or as violating the constitutional provision against taking property without due process of law. Louisville Railroad v. United States (U.S.), Sup., at pp. 18, 20; Louisville Railroad v. United States (D. C.), Sup., at p. 684. Nor is it affected by the fact that the Louisville & Nashville owns the majority of the stock of the Nashville & Chattanooga.

Neither is the order invalid as to the Louisville & Nashville by reason of the fact that it has no track connection with the Tennessee Central within the switching limits of the Terminals, since it, as a party to the Terminal agreement is carrying on switching operations for itself and for the Nashville & Chattanooga over the tracks of the Nashville & Chattanooga, which connect with the tracks of the Tennessee Central by an inter-

change track within such switching limits.

Neither does the order of the Commission, in our opinion, require the Louisville & Nashville and the Nashville & Chattanooga to either admit the Tennessee Central into the Terminal agreement, as a constituent member thereof, or to switch its competitive traffic at \$3.00 per car, or at any other rate which may be less than the actual cost of service, exclusive of fixed charges. (All that the order requires is that so long as they interchange competitive and non-competitive traffic between their own lines on the same terms, they shall desist from making a distinction between competitive and non-competitive Ten-

nessee Central traffic; and that they shall establish and maintain rates for switching interstate Tennessee Central traffic which shall not be different from those which they contemporaneously maintain with respect to switching similar traffic for each other; in other words, that they shall cease discrimination in interswitching their respective interstate competitive and non-competitive traffic and that of the Tennessee Central.) nothing in the order which requires the Louisville & Nashville and the Nashville & Chattanooga to abrogate their Terminal agreement; they are merely required, if they see fit to maintain it, to make no distinction, in operating under it, between competitive and non-competitive Tennessee Central traffic, so long as they make no such distinction in their own traffic, and, whether they carry on their future switching operations separately or jointly, to publish and maintain rates applicable to the switching of interstate Tennessee Central traffic, both competitive and non-competitive, which shall be the same as those for switching their own interstate traffic. either the charges which they now make for switching non-competitive Tennessee Central traffic, or those which, through the Terminals, they now make each other, are unreasonably low, as involving no element of fixed charges, or otherwise, this can be obviously remedied, consistently with the order of the Commission, by publishing and maintaining just and reasonable charges for switching their own interstate competitive and non-competitive traffic respectively, which shall likewise apply in the switching of similar Tennessee Central interstate traffic, although of course, to the extent and in the proportion that they are proprietors of and share in the revenues of the Terminals, they will receive indirectly reimbursement for the switching charges made in reference

We therefore conclude that the application of the Louisville & Nashville and the Nashville & Chattanooga for a temporary injunction should be denied. And since there is exhibited with and as a part of the petition all the evidence taken before the Commission, we are constrained to conclude that the petition shows on its face no equity or ground for permanently enjoining the enforcement of the order of the Commission, which is the ultimate relief sought. We are hence of the opinion that the motion of the United States and of the Commission to dismiss the petition should, as to the petitioning railroads, be sustained; this being a matter within the authority of the three judges now composing the court, un-

der the provision of the Act of 1913, Sup., relating to the final hearing before three judges of any suit brought to suspend or set aside an order of the Commission; the hearing of a motion to dismiss a petition for want of equity being, in our opinion, a final hearing within the

meaning of such provision.

And while the Terminal Company is shown by the proof to be solely a holding company carrying on no railroad or switching operations whatever, the order rendered against it by the Commission having been apparently inadvertently made and probably intended against the Terminals, the unincorporated association through which the two railroads carry on their switching operations, yet no material injury to it is shown from the order, which apparently can not apply to or affect it in any way; hence no ground for the issuance of an injunction appears at its instance, either interlocutory or permanent, a court of equity not enjoining merely abstract and theoretical injuries which involve no substantial prejudice. People v. Canal Board, 55 N. Y. 390; Drummond Tobacco Co. v. Randle, 114 Ill. 412; Willcox v. Trenton Potteries, 64 N. J. Eq. 173; Atkins v. Chilson, 7 Metc. (Mass.) 398.

A decree will accordingly be entered denying the motion of the petitioners for an interlocutory injunction, sustaining the motions of the United States and of the Commission, and dismissing the petition, with costs.

Said opinion was endorsed: Filed September 18, 1915, H. M. Doak, Clerk, by F. B.

McLean, D. C.

On September 18, 1915, the court lodged with the clerk the following proposed decree, subject to application for change within five days:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.,

vs. No. 30. In Equity.

UNITED STATES OF AMERICA, ET AL.

This cause came on to be heard on the motion of the petitioners for an interlocatory injunction restraining the enforcement of the order of the Interstate Commerce Commission complained of herein pendente lite, and upon motions of the United States of America and the Interstate Commerce Commission to dismiss the petition; which said motions were heard before three judges, as provided by the Act of October 22, 1913, chap. 32; and, having been argued by counsel and considered by the court, and the court having handed down its per curiam opinion thereon, it is, in accordance therewith, ordered, adjudged, and decreed by the court as follows:

 That the motion of the petitioners for an interlocutory injunction be, and the same hereby is, denied;

and

2. That the motion of the United States of America and the Interstate Commerce Commission to dismiss the petition be, and the same hereby is, sustained, and the petition herein be and hereby is dismissed, at the cost of the petitioners, for which execution will issue. Approved for entry.

Sanford, Judge.

Presented September 18, 1915.

Requests for any addition or change to be presented by September 23, 1915.

On September 23, 1915, plaintiffs filed a written motion to amend the decree proposed to be entered upon the above opinion:

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
ET AL.,
VS. No. 30. IN EQUITY.

UNITED STATES OF AMERICA, ET AL., - - Defendants.

Come the plaintiffs and move the court to alter and amend the order proposed herein on September 18, 1915, denying their application for an injunction and dismissing their bill, by now granting an interlocutory injunction pending the appeal of this case to the Supreme Court of the United States, or otherwise by proper order maintaining the status quo until said appeal shall be decided, said amended order to be upon such terms, as to execution of a bond and the prosecution in good faith of said appeal within sixty days, as the court may deem proper.

H. L. STONE,
KEEBLE & SEAY,
CLAUDE WALLER,
E. S. JOUETT,
Attorneys for Plaintiffs.

Said motion was endorsed: Filed September 23, 1915, H. M. Doak, Clerk, by F. B. McLean, D. C.

On October 22, 1915, the court filed its second per curiam opinion:

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

VS. No. 30. In Equity.

United States of America, et al.

Before WARRINGTON, Circuit Judge, and McCALL and SANFORD, District Judges.

Per Curiam. In the opinion heretofore handed down in this cause, it was directed that a decree be entered

denying the motion of the petitioners for an interlocutory injunction and dismissing the petition. Before the entry of such decree the petitioners moved the court to modify the proposed order by granting them an interlocutory injunction pending an appeal to the Supreme Court, or otherwise by proper order maintaining the status quo until such appeal should be decided, upon such terms as to execution of bond and prosecution of the appeal as the court might deem proper. This motion has

been heard by the court after due notice.

The inherent authority of a court of equity, in the exercise of a sound discretion, to accompany a decree changing the status quo with an appropriate provision nevertheless preserving the status quo pending an appeal, is clear. Hovey v. McDonald, 109 U. S. 150, 151, 162. This case was followed by Thayer, Circuit Judge, in Cotting v. Stockyards Co. (C. C.), 82 Fed. 850, 857, in which, in a suit to enjoin the enforcement of a State statute, the court in its final decree, although denying an injunction and dismissing the bill, nevertheless, upon its own initiative, in view of the probability of an appeal, the importance of the questions involved, the doubt with which they were baalneed, and the great harm which would result to the plaintiffs in the enforcement of the statute pending the appeal in the event the decree should be reversed, at the same time restored a restraining order that had been vacated by a former decree in the cause and continued the same in force pending the taking and determination of an appeal to the Supreme Court, upon conditions set forth in the opinion. This action of the Circuit Court was set forth in extenso in the statement of the case made by Mr. Justice Brewer in delivering the opinion of the Supreme Court on appeal, with, it seems, implied approval, and in the opinion itself it was stated that the Circuit Judge, although denying the relief sought by the plaintiffs, had "exercised his power of continuing the restraining order until such time as these questions could be determined," thus inferentially at least, if not expressly, recognizing the continuance of the restraining order as a proper exercise of "the power" of the Circuit Court under such circumstances. Cotting v. Stockyards Co., 183 U. S. 79, This principle was furthermore recognized in Louisville Railroad v. Siler (C. C.), 186 Fed. 176, 203, decided by three judges, two of whom are sitting in the present case, and in which, while denying the complainant's motion for an interlocutory injunction, the court, upon its own initiative, in view of the probability of an appeal, continued a previous restraining order until an opportunity had been given to the plaintiff to secure a review upon appeal, upon terms prescribed in the order, and see, by analogy, Interstate Commission v. Louisville Railroad (C. C.), 101 Fed. 146, 148, in which the court, after entering a decree granting an injunction restraining the plaintiffs from disobeying an order of the Interstate Commerce Commission, subsequently, at the same term, upon the application of the defendants, suspended the execution of such decree pending an appeal by the plaintiffs. upon conditions set forth in the opinion, and superseded the injunction pending such appeal.

The majority of the court are of opinion that this inherent power of a court of equity to maintain the status quo pending an appeal, is not impaired or lessened by any of the several provisions of the Interstate Commerce Act, the Act creating the Commerce Court (subsequently embodied in Sections 200, et seq. of the Judicial Code) or the Act of October 22, 1913, c. 32, abolishing the Commerce Court and transferring its jurisdiction to the District Courts of the United States, upon which the defendants rely as limiting the authority of the court in the

premises.

It further appears from the affidavits submitted by the petitioners, which are not controverted, that in the event the decree of this court denying the injunction praved by the petitioners and dismissing their bill should be reversed by the Supreme Court, a great and irreparable injury would in the meantime have resulted to the petitioners by reason of the diversion of part of their traffic entering and leaving Nashville by competing railroads enabled to obtain access to local industries on their lines through the enforcement of the order of the Interstate Commerce Commission, and the expense and disturbance of their business caused by changing their former practices in the meantime so as to comply with the order of the Commission and the publication of new tariffs. And, on the other hand, it does not clearly appear that any particular individuals would suffer material financial injury in the event the order of the Commission is staved for a short time so as to enable the petitioners to perfect their appeal and to present to the Supreme Court an application for a preliminary suspension order of the Commission pending the hearing of the appeal in the Supreme Court, in accordance with the practice recognized in Omaha Street Railway v. Interstate Commission, 222 U. S. 582, 583.

It results, therefore, that in the oninion of a majority of the court, in view of the importance of the questions

involved in this cause, and the irreparable injury which will result to the petitioners from the enforcement of the decree in this cause, if reversed, unless a short stay is granted, that the decree whose entry has heretofore been directed denving the preliminary injunction and dismissing the petition, should, under all the circumstances of the case, in the exercise of a sound discretion, be modified so as to provide that if the petitioners shall within thirty days from the entry of such decree take and perfect an appeal to the Supreme Court and also present to that court. within such thirty days, a petition for a preliminary suspension of the order of the Commission pending the determination of such appeal, the enforcement of the order of the Commission should be staved until a decision by the Supreme Court upon the question of granting such preliminary suspension of the order of the Commission shall be rendered; provided, however, further, that in addition to the ordinary appeal bond, the petitioners shall also, at or before the time of the allowances of an appeal, make and file in this court their bond, in the penal sum of \$25,000, payable to the clerk of this court, with sureties to be approved by him, conditioned that in the event the petitioners shall not, within thirty days from the entry of such decree, take and perfect an appeal to the Supreme Court and also present to that court, within such thirty days, a petition for a preliminary suspension of the order of the Commission pending such appeal, or in the event the appeal from the decree of this court is dismissed by the petitioners or the decree of this court denving the interlocutory injunction and dismissing the petition is affirmed by the Supreme Court, they will, on demand, pay to the party or parties entitled thereto, all legal damages accruing to them by reason of the stay of the order of the Commission granted by such decree.

Said opinion was endorsed: Filed October 22, 1915. On October 22, 1915, the court entered the following decree denying an injunction, discussing bill and allowing a temporary stay:

IN THE UNITED STATES DISTRICT COURT FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

LOUISVILLE & NASHVILLE RAILROAD CO.,

vs. No. 30. Equity.

UNITED STATES OF AMERICA, ET AL.

This cause came on to be heard on the motion of the petitioners for an interlocutory injunction restraining the enforcement of the order of the Interstate Commerce Commission complained of herein pendente lite; the motions of the United States of America and the Interstate Commerce Commission to dismiss the petition; and the Supplemental motion of the petitioners for an order preserving the status quo pending the determination of an appeal to the United States Supreme Court; which said motions were heard before three judges, as provided by the Act of October 22, 1913, Chap. 32, and have been argued and considered by the court, and the court having handed down its per curiam opinions thereon, it is, in accordance therewith, ordered, adjudged and decreed by the court as follows:

1. That the motion of the petitioners for an interlocutory injunction be, and the same hereby is, denied;

and

2. That the motion of the United States of America and the Interstate Commerce Commission to dismiss the petition be, and the same hereby is, sustained, and that the petition herein be, and hereby is, dismissed, at the costs of the petitioners, for which execution will issue.

3. Provided, however, that if the petitioners shall, within thirty days from the entry of this decree, take and perfect an appeal to the Supreme Court and also within such thirty days present to that court a petition for a preliminary suspension of the aforesaid order of the said Commission pending the determination of such appeal, the enforcement of the said order of the said Commission shall be, and hereby is stayed until a decision by the Supreme Court upon the question of granting such preliminary suspension of said order of the said

Commission shall be rendered; provided further, however, that in addition to the ordinary appeal bond, the petitioners shall also, at or before the time of the allowance of the appeal, make and file in this court their bond, in the penal sum of \$25,000, payable to the clerk of this court, with sureties to be approved by him, conditioned that in the event the petitioners shall not, within thirty days from the entry of such decree take and perfect an appeal to the Supreme Court and present to that court, within such thirty days, a petition for preliminary suspension of said order of the said Commission pending such appeal, or in the event that the appeal from the decree of this court is dismissed by the petitioners, or the decree of this court denying the interlocutory injunction and dismissing the petition is affirmed by the Supreme Court, they will, on demand, pay to the party or parties entitled thereto all legal damages accruing to them by reason of the stay of said order of the said Commission granted by this decree.

Approved for entry.

SANFORD, Judge.

On November 2, 1915, as of November 1, 1915, plaintiffs filed the following petition for an appeal to the Supreme Court:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, Louisville & Nashville Terminal Company, Plaintiffs,

versus

United States of America,
Interstate Commerce Commission,
City of Nashville,
Traffic Bureau of Nashville,
Tennessee Central Railroad Company, - Defendants.

PETITION FOR APPEAL.

To the Honorable Edward T. Sanford, District Judge:

The above-named Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway,

and Louisville & Nashville Terminal Company, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 22d day of October, A. D., 1915, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and they pray that their appeal be allowed, citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of said court, in such cases made and provided.

And your petitioners further pray that the proper order relating to the security to be required of them be

made.

H. L. STONE, W. A. COLSTON. CLAUDE WALLER, E. S. JOUETT.

Solicitors for Plaintiffs.

Endorsed:

Filed November 2, 1915, as of November 1, 1915. H. M. Doak, Clerk, by F. B. McLean. Appeal allowed. Citation will issue upon the giving by the petitioners of a bond in the sum of one thousand dollars with sureties approved by me, conditioned for the payment of costs as required by law. This November 1, 1915.

EDWARD T. SANFORD, District Judge. 84 CITY OF NASHVILLE, ET AL., V. L. & N. B. R. CO., ET AL.

On November 1, 1915, plaintiffs filed the following assignment of errors:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, LOUISVILLE & NASHVILLE TERMINAL COMPANY, Plaintiffs,

versus

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, CITY OF NASHVILLE, TRAFFIC BUREAU OF NASHVILLE, TENNESSEE CENTRAL RAILROAD COMPANY, - Defendants.

ASSIGNMENT OF ERRORS.

Now come the plaintiffs in the above-entitled cause and file the assignment of errors hereinafter set forth, upon which they will rely in their prosecution of the appeal to the Supreme Court in the above-entitled cause from the decree made by this Honorable Court on the

22d day of October, 1915.

Only one error, in effect is relied upon, and that is the finding of the court that the undisputed facts constitute a switching of competitive cars by each of plaintiffs for the other, and hence that their refusal to switch competitive cars for the Tennessee Central Railroad Company constitutes an unjust discrimination. This error is set out more formally in the following assignment of errors:

T.

The court erred in denying the application of plaintiffs for an interlocutory injunction herein and in dismissing their bill.

II.

Switching by one railroad company for another, as meant in cases of this sort, is the movement, by the company upon whose tracks an industry is located, of a car between that industry and the point of interchange with another railroad, as the beginning of an outbound, or the

ending of an inbound, transportation haul over the other railroad.

Here the uncontroverted facts and circumstances existing at Nashville in connection with the acquisition, maintenance, and operation of joint terminals by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway show indisputably, as a matter of law, that plaintiffs do not switch traffic for each other, either competitive or non-competitive, but that each in effect does its own switching, under a valid, joint owning and operating arrangement whereby they acquired jointly their central and principal terminals at a cost of several million dollars, and to these each contributed its privately owned tracks within the switching limits, and all these terminals are operated jointly. the expense being shared substantially in proportion to the number of cars handled for each, so that each thus pays for the movement of its own cars, neither pays the other any switching charge, and none is paid by the shipper.

The court, therefore, erred in holding that the arrangement between the plaintiffs for the joint ownership, maintenance and operation of the terminals at Nashville is in substance or effect equivalent to one of said companies switching for the other, or is essentially the same as a reciprocal arrangement, constituting a facility for the interchange of traffic between the lines of the two railroads within the meaning of the second paragraph of Section 3 of the Interstate Commerce Act; in holding that they must afford such facility to the Tennessee Central Railroad Company; and in holding that their refusal so to do and to switch competitive traffic to and from the Tennessee Central on the same terms as non-competitive traffic, when both kinds of traffic to and from their respective roads are handled alike under their joint ar-

rangement is unjustly discriminatory.

III.

Based upon the above conclusions, the Interstate Commerce Commission entered an order commanding plaintiffs to desist from maintaining a practice whereby they refuse to interchange interstate competitive traffic to and from the tracks of the Tennessee Central at Nashville on the same terms as interstate non-competitive traffic, while interchanging both kinds of said traffic with each other on the same terms, and commanding plaintiffs to establish, publish, maintain and to apply to the switching of interstate traffic to and from the Tennessee Central tracks

rates and charges which shall not be different from those which they contemporaneously maintain with respect to similar shipments from their respective tracks in said

city.

The court erred in holding that this order was supported by substantial evidence and that, upon the uncontroverted evidence, it involves no error of law; and in not holding that the report and order of the Commission were contrary to the indisputable nature of the evidence.

Wherefore, plaintiffs pray that said decree be reversed and that said District Court for the Middle District of Tennessee be directed to enter a decree reversing

the decision of the lower court in said cause.

H. L. STONE,
W. A. COLSTON,
CLAUDE WALLER,
E. S. JOUETT,
Solicitors for Plaintiffs.

Filed November 1, 1915. H. M. Doak, Clerk, by E. L. Doak, D. C.

On November 2, 1915, the plaintiffs filed the special bond in the sum of twenty-five thousand dollars (\$25,000) required in order allowing stay pending appeal:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., - - - - Appellants, versus

UNITED STATES OF AMERICA, ET AL., - Appellees.

SPECIAL BOND REQUIRED BY THE COURT IN CONNECTION WITH ITS STAY ORDER OF OCTOBER 22, 1915.

Known all Men by These Presents:

That we, Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway Company, and Louisville & Nashville Terminal Company, as principals, and the National Surety Company, a corporation, duly authorized to do business in the State of Tennessee and duly empowered, among other things, to sign as surety bonds of this character, and this bond in particular, are held and firmly bound unto the United States of America, Interstate Commerce Commission, City of Nashville, Traffic Bureau of Nashville, the Tennessee Central Railroad Company, and any other parties entitled to the benefit of this bond under the court's order herein, in the sum of twenty-five thousand (\$25,000) dollars, lawful money of the United States, to be paid to them and their respective representatives and successors; to which payment, well and truly to be made, we bind ourselves and our representatives and successors, jointly and severally, by these presents:

This bond, however, is conditioned as follows:

Wheeras, in the above-entitled action, the court, before entering its judgment therein, indicated that it would deny the plaintiff's application for an injunction, and would dismiss their bill, whereupon plaintiffs entered a motion for an order of suspension, maintaining the *status* quo pending an appeal, which they contemplated taking to the Supreme Court of the United States, and

Whereas the court, as a part of its final judgment entered herein October 22, 1915, denying the aforesaid injunction and dismissing plaintiffs' bill, embraced therein

the following proviso, to-wit:

Provided, however, that if the petitioners shall, within thirty days from the entry of this decree, take and perfect an appeal to the Supreme Court and also within such thirty days present to that court a petition for a preliminary suspension of the aforesaid order of the said Commission pending the determination of such appeal, the enforcement of the said order of the said Commission shall be, and hereby is stayed until a decision by the Supreme Court upon the question of granting such preliminary suspension of said order of the said Commission shall be rendered; provided further, however, that in addition to the ordinary appeal bond. the petitioners shall also, at or before the time of the allowance of the appeal, make and file in this court their bond, in the penal sum of \$25,000, payable to the clerk of this court, with sureties to be approved by him, conditioned that in the event the petitioners shall not, within thirty days from the entry of such decree take and perfect an appeal to the Supreme Court, and present to that court, within such

thirty days, a petition for preliminary suspension of said order of the said Commission pending such appeal, or in the event that the appeal from the decree of this court is dismissed by the petitioners, or the decree of this court denying the interlocutory injunction and dismissing the petition is affirmed by the Supreme Court, they will, on demand, pay to the party or parties entitled thereto all legal damages accruing to them by reason of the stay of said order of the said Commission granted by this decree."

Now, therefore, if the above-named Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company shall comply with the requirements of that portion of the court's judgment above quoted, then this obligation shall be void, otherwise to remain in full force and effect.

Louisville & Nashville Railroad Company

By W. L. MAPOTHER,

Its Agent.

Nashville, Chattanooga & St. Louis Railway
By Jno. Howe Peyton,

Its Agent.

Louisville & Nashville Terminal Company By W. L. Mapother,

Its Agent.

National Surety Company
By WM P. RUTLAND,
Attorney-in-Fact.

Filed November 2, 1915, as of November 1, 1915. H. M. Doak, Clerk, by F. B. McLean, D. C.

The within bond is approved, both as to sufficiency and form, this 1st day of November, 1915.

H. M. Doak, Clerk. On November 3, 1915, plaintiffs filed the following regular bond on appeal:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY, ET AL., - - - - - - - Appellants, versus

UNITED STATES OF AMERICA, ET AL., - - Appellees.

BOND ON APPEAL.

Know All Men by These Presents:

That we, Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company, as principals, and the National Surety Company, a corporation, duly authorized to do business in the State of Tennessee and duly empowered, among other things, to sign as surety bonds of this character, and this bond in particular, are held and firmly bound unto the United States of America, Interstate Commerce Commission, City of Nashville. Traffic Bureau of Nashville, and the Tennessee Central Railroad Company, in the sum of one thousand (\$1,000) dollars lawful money of the United States, to be paid to them and their respective representatives and successors, to which payment, well and truly to be made. we bind ourselves, jointly and severally, and our respective representatives and successors by these presents. This bond, however, is conditioned as follows:

Whereas, the above-named Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company have prosecuted an appeal to the Supreme Court of the United States to reverse the decree and judgment of the District Court for the Middle District of Tennessee, entered on October 22, 1915, in the above-entitled cause.

Now, therefore, if the above-named Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company shall prosecute their said appeal to effect and

answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

Louisville & Nashville Railroad Co.
By Ed. T. Seay,
Its Agent and Attorney.

Nashville, Chattanooga & St. Louis Railway
By Jno. Howe Peyton,

President.

Louisville & Nashville Terminal Co.
By Ed. T. Seay,
Its Agent and Attorney.

National Surety Company
By W. P. RUTLAND,
Atty.-in-fact.
(Surety Co.'s Seal.)

(Seal of N., C. & St. L. R'y. Attest: J. B. Hill, Asst. Secy.)

The within bond is approved both as to sufficiency and form this 2d day of November, 1915.

EDWARD T. SANFORD, District Judge.

On November 3, 1915, the clerk issued the following citation, with divers copies for all defendants:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & St. LOUIS RAILWAY, LOUISVILLE & NASHVILLE TERMINAL COMPANY, Plaintiffs,

versus

United States of America, Interstate Commerce Commission, City of Nashville, Traffic Bureau of Nashville, Tennessee Central Railroad Company, - Defendants.

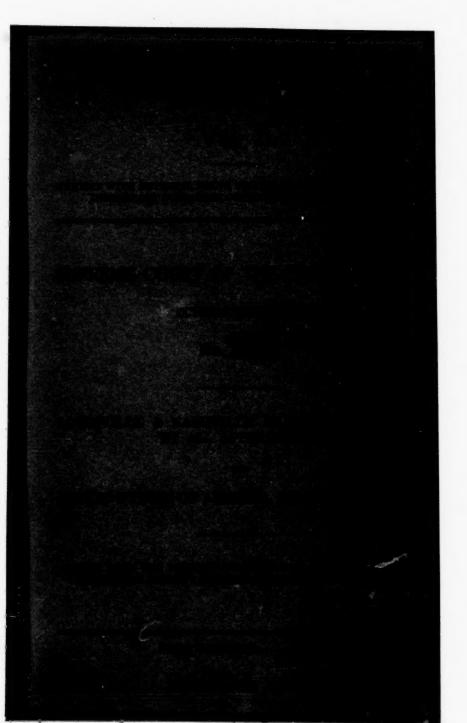
To the United States of America, Interstate Commerce Commission, City of Nashville, Traffic Bureau of Nashville. Tennessee Central Railroad Company.

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, D. C., within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court for the Middle District of Tennessee, from a final decree of said court filed and entered on the 22d day of October, 1915, in that certain suit, being Equity No. 30, wherein the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Company are plaintiffs, and you are defendants and appellees, to show cause, if any there be, why the decree rendered against said appellants, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Hon. Edward T. Sanford, United States District Judge for the Middle District of Tennessee, this 2d day of November, 1915.

(Signed) Edward T. Sanford, United States Judge for the Middle District of Tennessee.

Copies of said citation were thereupon returned, upon which appeared the following acknowledgments of service:



INDEX TO VOLUME II.

RECORD OF PROCEEDINGS BEFORE I. C. COMMISSION, EXCEPT MAPS AND BLUE PRINTS.

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Answer of Louisville & Nashville Railroad Company (Exhibit B)	26
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SPECIAL INDEX OF CONTRACTS, ETC., IN VOLUME II.	
Original trackage contract of May 1, 1872	506
Charter of Louisville & Nashville Terminal Company	495
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Contract for joint maintenance and operation of terminals, August 15, 1900	378
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Modifying contract of December 3, 1902	55 8



EXHIBIT A.

PETITION

BEFORE THE INTERSTATE COMMERCE COMMISSION.

CITY OF NASHVILLE,

TRAFFIC BUREAU OF NASHVILLE,

Petitioners.

vs.

Louisville & Nashville Railroad Company,
Louisville & Nashville Terminal Company,
Nashville, Chattanooga & St. Louis Railway,
Nashville Terminal Company, and
Tennessee Central Railroad Company, H. B. ChamberLain and W. K. McAlister, Receivers,
Respondents.

The petition of the above-named petitioners respectfully shows:

T.

That petitioner, City of Nashville, is a municipal corporation, organized and existing under the laws of the State of Tennessee, and is authorized and empowered by its charter of incorporation to sue and be sued, plead and be impleaded in all courts of law and equity and in all actions whatsoever.

That petitioner, Traffic Bureau of Nashville, is an association composed of merchants, manufacturers, and shippers of the City of Nashville; that it is located in the City of Nashville, in the State of Tennessee, and is incorporated under the laws of the State of Tennessee; that the principal purposes of its charter are those of

forwarding and protecting the interests of the merchants, manufacturers and shippers of the City of Nashville, Tenn., as well as their patrons, in all matters connected with the receiving and shipment of freight, freight rates, transportation and of securing such freight rates to and from all shipping points as shall prevent discriminations against the City of Nashville and shippers and patrons of Nashville, Tenn.

And this petition is made and filed by said Traffic Bureau of Nashville, on behalf of its members, and by said City of Nashville, on behalf of the city itself, and all other shippers and receivers of freight located in the

City of Nashville, Tenn.

II.

The respondents above named are common carriers engaged in the transportation of passengers and property, wholly by railroad, between points in the different States of the United States, and as such common carriers, are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and Acts amendatory thereof and supplementary thereto.

III.

That respondent, Louisville & Nashville Terminal Company, is a terminal corporation duly created and organized under the laws of the State of Tennessee, and was chartered and organized under said laws March 21, 1893, for the purpose, among others, as set forth in its charter of incorporation, "of acquiring, constructing, maintaining, operating or leasing to others railroad terminal facilities for the accommodation of railroad passengers, and for hauling and transferring railroad freight," and with the following, additional, among other powers, conferred by its charter of incorporation:

"Said corporation shall have the power to acquire in this or any other State or States, and at such place or places, as shall be found expedient, such real estate as may be necessary, on which to construct, operate and maintain passenger stations, comprising passenger depots, office buildings, sheds

and storage yards and freight stations comprising freight depots, warehouses, offices and freight yards, roundhouses and machine shops, also main terminal railroad facilities, appurtenances and accommodations, suitable in size, location and manner of construction, to perform promptly and efficiently the work of receiving, delivering and transferring all passenger and freight traffic for railroad companies with which it may enter into contract for the use of its terminal facilities, and at such place or places. Said corporation shall have the power by purchase, lease or assignment of lease, to acquire and hold and to lease to others such real estate as may be necessary for the above-mentioned purposes of its corporation: and it may also acquire such real estate by condemnation in pursuance of the general laws, authorizing the condemnation of private property for work of internal improvement."

That said company owns a Union Station, freight station and other terminal stations; that the length of main track in Nashville, Tenn., owned is 1.07 miles; that it also

owns 30.32 miles of sidings.

That said company does not file with this Honorable Commission any switching or terminal tariff, its property being leased for 99 years, from December 3, 1902, to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, at a rental of four (4) per cent per annum, upon the cost; the proportion paid by each company being determined by its use of the property and the number of cars handled, the operating expenses being divided upon the same basis.

IV.

That respondent, Nashville Terminal Company, is a terminal corporation, duly created and organized under the laws of the State of Tennessee, and was chartered under said laws August 12, 1893, for the purpose, among others, as set forth in its charter of incorporation, "of acquiring, constructing, maintaining, operating or leasing to others, railroad terminal facilities for the accommodation of railroad passengers, and for hauling and transferring railroad freight," with the following addi-

tional, among other, powers, conferred by its charter of incorporation:

"Said corporation shall have the power to acquire in this or any other State or States, and at such place or places, as shall be found expedient, such real estate as may be necessary, on which to construct, operate and maintain passenger stations, comprising passenger depots, office buildings, sheds and storage vards and freight stations comprising freight depots, warehouses, offices and freight vards, roundhouses, and machine shops, also main sidetracks, switches, cross-overs, turnouts and other terminal railroad facilities, appurtenances, and accommodations, suitable in size, location and manner of construction, to perform promptly and efficiently the work of receiving, delivering and transferring all passenger and freight traffic for railroad companies with which it may enter into contract for the use of its terminal facilities, and at such place or places. Said corporation shall have the power by purchase, lease or assignment of lease, to acquire and hold and to lease to others such real estate as may be necessary for the above-mentioned purposes of its corporation; and it may also acquire such real estate by condemnation in pursuance of the general laws, authorizing the condemnation of private property for works of internal improvement."

That said company does not file with this Honorable Commission any switching or terminal tariff, its property being operated by the Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers, under a ninety-nine (99) year lease, dated April 1, 1911, the consideration of the lease being equal to five (5) per cent on the bonds of the company, taxes and other charges.

V.

That respondent, Louisville & Nashville Railroad Company, is a railroad corporation, duly created and organized under the laws of the State of Kentucky; that it owns the entire capital stock of the Louisville & Nashville Terminal Company; and that it controls the Nashville, Chattanooga & St. Louis Railway through ownership of seventy-one and seventy-eight hundredths per cent of the total outstanding capital stock of said Nashville, Chattanooga & St. Louis Railway.

VI.

That respondent, Louisville & Nashville Railroad Company, has in effect and has filed with this Honorable Commission, Louisville & Nashville Railroad Tariff G. F. O. No. 1930, I. C. C. No. A-12658, which contains rates, rules and regulations governing absorptions, bedding, feeding, drayage, switching and other terminal charges at stations on the Louisville & Nashville Railroad.

That on first revised page 261, effective August 3, 1913, and page 262, effective December 3, 1912, of said tariff, the following, among other, switching rates, rules and regulations at Nashville, Tenn., are published:

"Rule 1. The Nashville Terminals, composed of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, handles freight within the terminal limits of Nashville, Tenn., for the Louisville & Nashville Railroad.

"Rule 2. Rates in this tariff cover the movement of a loaded car one way, and the return of the empty car, or the placing of an empty car, and returning it loaded, unless specified to the contrary herein. If an empty car is ordered for loading, and the service of switching or placing it has been performed, and the car is not loaded, the regular switching charge as shown in this tariff will be assessed against the person, firm or corporation ordering such car.

"Rule 4. (a) There is no switching charge to or from locations on tracks of the Nashville Terminals, within switching limits on freight traffic, car loads, from or destined to Nashville, Tennessee, via the L. & N. R. R., regardless of whether such traffic is from or destined to competitive or non-competitive points.

"(b) When destined to or coming from points on or via the L. & N. R. R., less than carload shipments of freight amounting to five thousand (5,000) pounds, or

over, will be switched free of charge between depots of the L. & N. R. R. and sidings, warhouses, or industries on tracks of the Nashville Terminals, within switching limits, and such placement or delivery of inbound freight shall constitute delivery of the freight to the consignee.

"Rule 41/2. Absorption of switching charges to or

from Hermitage Elevator, Nashville, Tenn.

"Inbound: On grain, carload, originating at points competitive with other lines, the L. & N. R. R. will ab-

sorb a switching charge of two dollars per car.

"Outbound: On grain, carload, destined to points competitive with other lines, the L. & N. R. R. will absorb a switching charge of two dollars per car.

"Rule 5. (a) Non-competitive Points: By 'non-competitive points' it is meant:

Points reached only by rails of the L. & N. R. Points reached only by rails of railroads having track connection with the L. & N. R. R. only.

"(b) Competitive Points: All points not included in the description of "non-competitive points," but this is not to be considered as authorizing the absorption of switching other than specifically provided for in the fore-

going rules.

"Rule 9. (a) Settlement for switching charges to reach receivers or shippers on tracks of connecting lines at Nashville, Tenn., must be made by the L. & N. R. R. direct with the connecting line or lines performing the switching service, and in no case will the L. & N. R. R. pay any switching charge to any shipper or receiver; the payments must in all cases be made direct to the connecting line or lines performing the service.

"(b) Where absorption of charges is made by the L. & N. R. R. under this tariff, the agent of the L. & N. R. R. at Nashville, Tenn., should file claim for his relief.

"Rule 15. (a) On freight traffic, carloads, except coal to or from points via the Tennessee Central Railroad, for which the L. & N. R. R. or N., C. & St. L. R'y do not compete at equal rates with the Tennessee Central Railroad. switching between industries, warehouses and elevators situated on private sidings of the Nashville terminal within terminal limits, as enumerated on pages 263 to 267, inclusive, and junction with the Tennessee Central Railroad at Baxter Heights, Tenn., switching charge of \$3.00

per car will be assessed.

"(b) No freight will be switched to or from any industry, warehouse, or elevator, situated within the Nashville Terminals, when from or destined to locations on Tennessee Central Railroad (Nashville Terminal Company) in Nashville, Tenn. (Files 361850 and 222208.)"

That the absorption of switching charges authorized in Rule 4½, quoted on page 9 of this petition, gives undue and unreasonable preference and advantage to carload competitive grain traffic to and from Hermitage Elevator, Nashville, Tenn., and to the Hermitage Elevator itself, and subjects all other carload competitive freight traffic at Nashville, Tenn., and all other industries, warehouses and elevators situated on sidings or tracks of, or private sidings which connect with, the Tennessee Central Railroad, or the Nashville Terminal Company, at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said switching charge of \$3.00 per car on noncompetitive carload freight traffic authorized by Rule 15 (a), quoted on page 10 of this petition, between industries, warehouses and elevators situated on private sidings of the "Nashville Terminals," within terminal limits, and junction with the Tennessee Central Railroad at Baxter Heights, Tenn., is unjust and unreasonable in and of itself, in violation of Section 1 of the Act to Regulate Commerce, as amended, and relatively unjust and unreasonable as compared with the switching charge for similar services performed at other points on the Louisville & Nashville Railroad, thus subjecting noncompetitive carload freight traffic received from or delivered to the Tennessee Central Railroad at Nashville. Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said tariff excepts from its provisions coal from the Tennessee Central Railroad, whether coming from a competitive or non-competitive point, thus prohibiting the switching or interchange of coal traffic between industries, warehouses and elevators situated on private sidings which connect with the tracks of the Louisville 8

& Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Terminal Company, within the terminal limits of Nashville, Tenn., when such coal traffic reaches Nashville via the Tennessee Central Railroad, and subjecting the traffic of coal to undue and unreasonable prejudice and disadvantage, in denying said traffic the same previleges granted other carload freight traffic at Nashville, Tenn., in violation of Section 3 of the Act to Regulate Commerce, as amended.

VII.

That respondent, Louisville & Nashville Railroad Company charges and collects the following rates for switching competitive carload freight traffic between industries, warehouses and elevators, situated on private sidings which connect with the tracks of the Louisville & Nashville Railroad tracks of the Louisville & Nashville Terminal Company and junction with the Tennessee Central Railroad at Baxter Heights, Tenn., as published and filed with this Honorable Commission, in Louisville & Nashville Railroad, Nashville Local Tariff No. 2, I. C. C. No. A-11500, effective June 3, 1910, and Supplements 10 and 16 thereof.

							C	LAS	SES							
					1	n (Cents	Per	100	Pou	nds					
1	2	3	4	5	6	A	В	C	D	E	H	(F Per)	I	L	M	N
12	10	9	8	7	6	6	6	5	5	6	6	(10 Bbl.)	6	5	4	3

Governed by Southern Classification No. 39, I. C. C. 17, issued by W. R. Powe, Agent, supplement and reissues, with exceptions as contained therein under note 28.

That said switching charges, applicable to competitive carload freight traffic are published between Nashville, Tenn., and Overtons, Tenn., on page 4, station 1, of said tariff, and are applied as switching charges between industries, warehouses and elevators, situated on private sidings which connect with the tracks of the Louisville & Nashville Railroad, or the tracks of the Louisville & Nashville Terminal Company, and junction with the Tennessee Central Railroad at Baxter Heights,

Tenn., by authority of Rule 2, page XVIII of said tariff, which reads as follows:

"To or from points not named herein, but which are directly intermediate with points to or from which specific class rates are named in this tariff, the class rate to or from the next more distant point will be applied."

That said switching charges on competitive carload freight traffic are unreasonable in and of themselves in violation of Section 1 of the Act to Regulate Commerce, as amended, and relatively unjust and unreasonable as compared with charges assessed for performing the same service in switching non-competitive carload freight traffic at Nashville, Tenn., and charges assessed for similar services performed in switching competitive and non-competitive carload freight traffic at other points on the Louisville & Nashville Railroad; thus subjecting carload competitive freight traffic received from or delivered to the Tennessee Central Railroad at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

VIII.

That respondent, Nashville, Chattanooga & St. Louis Railway has in effect at Nashville, Tenn., and has filed with this Honorable Commission, Terminal Tariff No. 2, I. C. C. No. 1958-A, effective September 1, 1911, which contains rates, rules and regulations governing demurrage, drayage, elevation, feeding, icing, switching, transfer and other terminal charges at stations on the Nashville, Chattanooga & St. Louis Railway and Western & Atlantic Railroad.

That on Eighth Revised page 44, of said tariff, effective December 14, 1913, the following, among other, rules, rates and regulations governing switching of cars and absorption of switching charges at Nashville, Tenn., appear:

"Rule 1. The Nashville Terminals, composed of the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad handles freight within the terminal limits of Nashville, Tenn., for the Nashville,

Chattanooga & St. Louis Railway.

"Rule 2. There is no switching charge to or from locations on tracks of the Nashville Terminals, within switching limits, on freight traffic, carloads, from or destined to Nashville, Tenn., via the N., C. & St. L. R'y, regardless of whether such traffic is from or destined to

competitive or non-competitive points.

"(a) When destined to or coming from points on or via the N., C. & St. L. R'y, less than carload shipments of freight aggregating five thousand (5,000) pounds, or over, will be switched free of charge between depot of the N., C. & St. L. R'y and sidings, warehouses, or industries, on tracks of the Nashville Terminals within switching limits, and such placement or delivery or inbound freight shall constitute delivery of the freight to the consignee. This rule does not apply to cars containing L. C. L. shipments of articles of exceptionally heavy or bulky nature weighing over 2,000 pounds each, which for our own convenience we might desire to switch, as on such articles no minimum loading is required.

"(b) Less than carload shipments of freight aggregating 5,000 pounds or over from sidings, warehouses, or industries located on the tracks of the Nashville Terminals and from private sidings connecting therewith, will be switched free of charge to Cummins Station for distribution and forwarding to points on or via the N., C. & St. L. R'y. In event any such shipments or portions thereof are not forwarded as herein provided, the full switching charge, as shown below will be assessed.

"Rule 5. On bulk grain in carloads, grain in barrels, boxes or sacks, not less than 24,000 pounds, grain products in barrels, boxes or sacks, carloads not less than 24,000 pounds, * * * received by the Nashville, Chattanooga & St. Louis Railway at Shops Junction, switched to elevators, mills or warehouses within the limits of the Nashville Terminals, the rates specified in Rule 8 will be assessed.

"(a) Upon submittal of evidence of the reshipment of an equivalent amount of such grain, or grain products, or shipment of an equivalent amount of milled product of such grain, via the N., C. & St. L. R'y, to all points, except N., C. & St. L. R'y local stations, but including mill

points south of Nashville on N., C. & St. L. R'y, this company will refund the switching charge so assessed.

"(b) Full Nashville proper rates will be applied to

outbound movement.

"Rule 8. This tariff will not apply on traffic between industries, side tracks, or warehouses located on the Nashville Terminals, and the Tennessee Central Railroad. On traffic received from or delivered to the Tennessee Central Railroad at Shops Junction, except as provided—under 'Exception' below—the following rates will be applied. Governed by Southern Classification No. 39, W. R. Powe's Agent, I. C. C. No. 17, with exceptions thereto as published under note 65, supplements thereto or reissues thereof.

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						1	n (ent	s P	er	100	Po	ounds						
1	2	3	4	5	6	A	В	C	D	Е	H	(F	Per)	L	M	N	Special Iron		
12	10	9	8	7	6	6	6	21	21	6	6	(5	Bbl.)	4	4	3	6		
					CO	OMA	IOI	TIC	IES								In Cents Per		
						Per	Ca	rloa	ıd								100 Pounds		
Horses and Mules			l	Cattle Single Deck								Sheep, Single Deck					Lumber, Carload		
\$7 00				\$7	00)		\$7 00				\$7 00					3		

[&]quot;Rule 9 eliminated. Rule 8 will apply.

"SWITCHING CHARGES

Between Industries, Warehouses and Elevators Within Terminal Limits,

Except as Shown Below.

Per Hundred Pounds, 1 Cent Minimum Charge Per Car, \$3.00.

EXCEPTION.

"Between industries, warehouses and elevators situated on private sidings within terminal limits and junction with the Tennessee Central Railroad at Shops Junction (N., C. & St. L. connection), applicable as outlined below, switching charge, per car, \$3.00.

"1. The switching charge specified above is applicable only on freight traffic, carload (except coal) to or from non-competitive points via Tennessee Central Rail-

road, when from or destined to industries, warehouses and elevators situated upon private sidings, which connect with N., C. & St. L. R'y tracks, or tracks of the Nashville Terminals within terminal limits, Nashville, Tenn.

By 'non-competitive' is meant traffic for which the N., C. & St. L. R'y or L. & N. R. R. does not compete at equal rates with the Tennessee Central Railroad.

No freight will be switched to or from any industry, warehouse or elevator situated within the terminal limits, when from or destined to location on Tennessee Central Railroad (or Nashville Terminal Company), Nashville, Tenn."

That Rule 5, quoted on pp. 16 and 17 of this petition, gives undue and unreasonable preference and advantage to carload grain traffic received from the Tennessee Central Railroad at Shops Junction, and subject all other carload freight traffic received from the Tennessee Central Railroad at Shops Junction, switched to elevators, mills, warehouses or industries within the limits of the Nashville Terminals, and subsequently reshipped from Nashville via the Nashville, Chattanooga & St. Louis Railway, to undue and unreasonable prejudice and disadvantage in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said switching charge of \$3.00 per car on noncompetitive carload freight traffic, as provided under "Exception," quoted on page 18 of this petition, between industries, warehouses and elevators situated on private sidings, which connect with the tracks of the Nashville, Chattanooga & St. Louis Railway, or the tracks of the Louisville & Nashville Terminal Company, and junction with the Tennessee Central Railroad at Shops Junction, Tenn., is unjust and unreasonable in and of itself, in violation of Section 1 of the Act to Regulate Commerce, as amended, and relatively unjust and unreasonable as compared with the switching charge for similar services performed at other points on the Nashville, Chattanooga & St. Louis Railway, thus subjecting non-competitive carload freight traffic received from or delivered to the Tennessee Central Railroad at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said tariff excepts from its provisions, coal when from the Tennessee Central Railroad, whether coming from a competitive or non-competitive point, thus prohibiting the switching or interchange of coal between industries, warehouses and elevators, situated on private sidings which connect with the tracks of the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, or the Louisville & Nashville Terminal Company, within the terminal limits of Nashville, Tenn., when such traffic reaches Nashville via the Tennessee Central Railroad, and subjecting the traffic of coal to undue and unreasonable prejudice and disadvantage, in denying said traffic the same privileges granted other carload freight traffic at Nashville, Tenn., in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said switching charges on competitive carload freight traffic from and delivered to the Tennessee Central Railroad at Shops Junction provided for in Rule 8. quoted on page 17 of this petition, are unreasonable in and of themselves in violation of Seection 1 of the Act to Regulate Commerce, as amended, and relatively unjust and unreasonable, as compared with the charges made for performing the same services in switching noncompetitive carload freight traffic at Nashville and for similar services performed in switching competitive and non-competitive carload freight traffic at other points on the Nashville, Chattanooga & St. Louis Railway, thus subjecting competitive carload freight traffic received from or delievered to the Tennessee Central Railroad at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

IX.

That respondent, Nashville, Chattanooga & St. Louis Railway, has published and filed with this Honorable Commission, ninth revised page 44 of its Terminal Tariff No. 2, I. C. C. No. 1958-A, effective January 25, 1914, cancelling Rules 5 and 8, referred to in paragraph VIII of this petition, and which restores Rule 9, referred to on page 17 of this petition, which reads as follows:

"9. Absorption of switching charges to or from Hermitage Elevator, Nashville, Tenn.

"'Inbound: On grain, carload, originating at points competitive with other lines, the N., C. & St. L. R'y will absorb a switching charged of two dollars per car.'

"Outbound: On grain, carload, destined to points competitive with other lines, the N., C. & St. L. R'y will absorb a switching charge of two dollars per car."

That the cancellation of Rule 8 will have the effect of leaving no switching charges in effect on competitive carload freight traffic received from or delivered to the Tennessee Central Railroad Company at Nashville, Tenn., and will thereby subject interstate competitive carload freight traffic destined to or forwarded from Nashville, Tenn., via the Tennessee Central Railroad Company, when consigned to or originating at switches, tracks, industries, warehouses or elevators reached by or connecting with the individually owned tracks, switches or terminal facilities of the Nashville, Chattanooga & St. Louis Railway, to even more undue and unreasonable prejudice and disadvantage than said traffic is now subjected under the unreasonably high switching charges authorized in Rule 8, referred to in paragraph VIII of this petition, in violation of Section 3 of the Act to Regulate Commerce, as amended.

That the absorption of switching charges authorized in Rule 9 of said tariff, quoted above, will give undue and unreasonable preference and advantage to carload competitive grain traffic to and from Hermitage Elevator, Nashville, Tenn., and to the Hermitage Elevator itself, and will subject all other carload competitive freight traffic at Nashville, Tenn., and all other industries, warehouses and elevators situated on sidings, or tracks of, or private sidings which connect with the Tennessee Central Railroad, or the Nashville Terminal Company at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

X.

That respondent, Louisville & Nashville Railroad Company, owns and operates individual switches, tracks and terminal facilities, located in what is known as East Nashville, and respondent, Nashville, Chattanooga & St. Louis Railway, owns and operates individual switches, tracks and terminal facilities in what is known as West Nashville.

That interstate competitive carload freight traffic destined to or forwarded from Nashville, Tenn., via either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway is switched to or from switches, tracks, industries, warehouses and elevators reached by or connecting with the individually owned switches, tracks and terminal facilities of the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway, within terminal limits at Nashville, Tenn., without additional charge to the con-

signee or consignor.

That interstate competitive carload freight traffic destined to or forwarded from Nashville, Tenn., via the Tennessee Central Railroad, consigned to or originating at industries, warehouses, and elevators reached by or connecting with the individually owned switches, tracks and terminal facilities of the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway, is subjected to the unreasonable switching charges, applicable to competitive carload freight traffic, set forth in paragraphs VII and VIII of this petition, thus subjecting interstate competitive carload freight traffic destined to or forwarded from Nashville, Tenn., via the Tennessee Central Railroad, when consigned to, or originating at switches, tracks, industries, warehouses and elevators reached by or connecting with the individually owned tracks, switches and terminal facilities of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, to undue and unreasonable prejudice and disadvantage in violation of Section 3 of the Act to Regulate Commerce, as amended,

XI.

Petitioners allege, on information and belief, that said tariffs and the discrimination created therein, as described in paragraphs VI, VII, VIII, IX and X of this petition, were established and made by mutual agreement and concert of action by, between and among respondents, the Louisville & Nashville Railroad Company, Louisville & Nashville Terminal Company and Nashville, Chattanooga & St. Louis Railway; said agreements and the discriminations created thereby, having been brought about by and between the Nashville, Chattanooga & St. Louis Railway, Louisville & Nashville Terminal Company and Louisville & Nashville Railroad Company, by virtue of and through the entire ownership of the capital stock of the Louisville & Nashville Terminal Company, and through the ownership of a majority of the capital stock of the Nashville, Chattanooga & St. Louis Rathway by the Louisville & Nashville Railroad Company, as shown in paragraph V of this petition.

XII.

That respondent, Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers, has in effect at Nashville, Tenn., and has filed with this Honorable Commission, Switching Tariff No. 5, I. C. C. No. A-274, effective September 8, 1911, which contains rates, rules and regulations governing drayage, switching and transfer at stations on the Tennessee Central Railroad.

On pages 7 and 8 of said tariff, the following, among others, rates, rules and regulations, appear:

"Rule 1. (a) Carloads— No cars will be switched for the receipt or delievery of less than 5,000 pounds of freight except that when tariffs or classifications provide a minimum of less than 5,000 pounds, such minimum will apply; provided, further, that no minimum weight will be required on articles requiring special facilities for loading and unloading, where such facilities are not provided.

"(b) Less Carloads—Less carload shipments aggregating 5,000 pounds or more forwarded by one shipper or consigned to one consignee, via the Tennessee Central Railroad will be switched without charge between the depots of this company, and switches, tracks, warehouses and industries reached by or connecting with the tracks

of the Tennessee Central Railroad Company.

"Rule 5. Track connections of the Tennessee Central Railroad Company with the Louisville & Nashville Railroad are at Vine Hill and Baxter Heights, and freight may be interchanged with that line through either of those points. Track connection with the Nashville, Chattanooga & St. Louis Railway is at Baxter Heights, and freight may be interchanged with that line at that point.

"Rule 6. 'Competitive points,' referred to in Rule 7 below are points which are not reached *exclusively* by the rails of the L. & N. R. R., N., C. & St. L. R'y or railroads having track connections with the L. & N. R. R. or N., C.

& St. L. R'y only.

"'Non-competitive points' referred to in Rule 8, page 8, are points which are reached *exclusively* by the rails of the L. & N. R. R., N., C. & St. L. R'y or railroads having track connections with the L. & N. R. Co. or N., C. & St. L. R'y *only*.

CHARGES ON TRAFFIC TO OR FROM COMPETITIVE POINTS.

"Rule 7. The Tennessee Central Railroad Company does not engage in the business of handling traffic between industries and warehouses on its tracks and points of interchange with the L. & N. R. R. or N., C. & St. L. R'v at Nashville when such traffic originates at, or is destined to competitive points (see Rule 6) on or reached via the Louisville & Nashville Railroad and its connections, or the Nashville, Chattanooga & St. Louis Railway and its connections, but where such service is performed as a matter of accommodation, rates named in Nashville Local Tariff No. 17-D, I. C. C. A-142, supplements thereto or reissues thereof, will be charged between points of interchange with the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway and warehouses and industries located on tracks of the Tennessee Central Railroad Company enumerated herein.

SWITCHING CHARGE ON TRAFFIC TO OR FROM NON-COMPETITIVE POINTS.

"Rule 8. Switching charge between industries and warehouses on the tracks of the Tennessee Central Railroad Company enumerated herein and points of connection with the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway on traffic (except coal) to or from non-competitive points (see Rule 6) beyond Nashville, Tenn.

\$3.00 PER CAR.

"Rule 9:

"LOCAL SWITCHING CHARGES

Between

Industries, Warehouses and Private Sidings Located on Tracks of the Tennessee Central Railroad Company.

One (1) cent per 100 pounds. Minimum charge, \$3.00 per car.

"Note: Will not apply on shipments delivered to or received from the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway. (See Rule 10.)

"Rule 10:

"CHARGES ON TRAFFIC

Between

Industries, Warehouses and Private Sidings Located on Tracks of the Tennessee Central Railroad Company

and

Points of Interchange with the Louisville & Nashville R. R. or the Nashville, Chattanooga & St. Louis Railway.

"Applicable only on shipments having both origin and destination within the switching limits at Nashville, Tenn.

"The Tennessee Central Railroad Company does not engage in the business of handling traffic between industries, warehouses and private sidings located on its tracks and points of interchange with the Louisville & Nashville R. R. or the Nashville, Chattanooga & St. Louis R'y where said traffic has both *origin* and *destination* within the switching limits of Nashville, Tenn., but where such service is performed as a matter of accommodation, rates named in Nashville Local Tariff No. 17-D, I. C. C. No. A-142, supplements thereto or reissues thereof, will be charged between points of interchange with the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway and private sidings, warehouses and industries located on the tracks of the Tennessee Central Railroad Company enumerated herein."

That said switching charge of \$3.00 per car on non-competitive carload freight traffic, authorized by Rule 8, referred to on page 28 of this petition, between switches, tracks, industries, warchouses and elevators reached by or connected with tracks of the Tennessee Central Railroad and points of connection with the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway is unjust and unreasonable in and of itself, in violation of Section 1 of the Act to Regulate Commerce, as amended.

That said tariff excepts from its provisions, coal from the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, whether coming from a competitive or non-competitive point, thus prohibiting the switching or interchange of coal between tracks, switches, industries, warehouses and elevators, reached by or connecting with the tracks of the Tennessee Central Railroad within the terminal limits of Nashville, Tenn., when such traffic reaches Nashville, Tenn., via the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway, and subjecting the traffic of coal to undue and unreasonable prejudice and disadvantage, in denying said traffic the same privileges granted other carload freight traffic at Nashville, Tenn., in violation of Section 3 of the Act to Regulate Commerce, as amended.

XIII.

That respondent, Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers,

has filed with this Honorable Commission, Supplement 6 to its Switching Tariff No. 5, I. C. C. No. A-274, effective January 25, 1914, containing the following, among other rates, rules, and regulations, governing switching at Nashville, Tenn.:

"Rule 7-A. (Cancels Rule 7, page 7, of Tariff, paragraph XII of this petition):

SWITCHING CHARGES TO OR FROM BAXTER HEIGHTS AND VINE HILL, TENN., ON TRAFFIC INTERCHANGED WITH THE L. & N. R. R. OR N., C. & ST. L. R'Y WHEN ORIGINATING AT OR DESTINED TO COMPETITIVE Points (See Rule 6, page 7, of Tariff; paragraph XII of this petition).

"(a) On grain, carloads, switched between Baxter Heights, Tenn., and the Hermintage Elevator & Ware-

house, the charge will be \$2.00 per car.

"(b) On traffic other than that provided for in paragraph (a) switched between Baxter Heights or Vine Hill, Tenn., and switches, tracks, warehouses or industries reached by or connecting with the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., the rates to be applied or those shown in Nashville Local Tariff No. 17-E, I. C. C. A-323, supplements or reissues, applying between Nashville and Baxter Heights or Vine Hill, Tenn.

"Rule 8-A. (Cancels Rule 8, page 8 of Tariff; paragraph XII of this petition):

SWITCHING CHARGES TO OR FROM BAXTER HEIGHTS AND VINE HILL, TENN., ON TRAFFIC INTERCHANGED WITH THE L. & N. R. R. OR N., C. & ST. L. R'Y WHEN ORIGINATING AT OR DESTINED TO NON-COMPETI-TIVE Points. (See Rule 6, page 7 of Tariff; paragraph XII of this petition):

"(a) On grain, carloads, switched between Baxter Heights, Tenn., and the Hermitage Elevator & Ware-

house, the charge will be \$2.00 per car.

"(b) On coal switched between Baxter Heights or Vine Hill, Tenn., and switches, tracks, warehouses or industries reached by or conecting with the tracks of the Tennessee Central Company at Nashville, Tenn., the charge will be 60 cents per net ton, carload, minimum

weight marked capacity of car.

"(c) On traffic other than that provided for in paragraphs (a) and (b) switched between Baxter Heights or Vine Hill, Tenn., and switches, tracks, warehouses or industries reached by or connecting with the track of the Tennessee Central Railroad Company at Nashville, Tenn., the charge will be \$3.00 per car."

That said switching charge of \$2.00 per car on grain originating at or destined to competitive or non competitive points between Baxter Heights, Tenn., and Hermitage Elevator & Warehouse, gives undue and unreasonable preference and advantage to grain traffic to and from Hermitage Elevator & Warehouse, Nashville, Tenn., and to the Hermitage Elevator & Warehouse itself, and subjects all other interstate carload freight traffic at Nashville and all other industries, warehouses and elevators situated on the sidings or tracks of, or private sidings which connect with, the Tennessee Central Railroad or the Nashville Terminal Company at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

That said switching charge of 60 cents per net ton on coal, carload, switched between Baxter Heights, or Vine Hill, Tenn., and switches, tracks, warehouses and industries, reached by or connecting with the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., is unreasonable in and of itself, in violation of Section 1 of the Act to Regulate Commerce, as amended, and relatively unreasonable as compared with the switching charges for performing the same or similar services in switching other interstate carload non-competitive freight, thereby subjecting coal traffic at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage in violation of Section 3 of the Act to Regulate Commerce, as amended.

XIV.

That the switching charge of respondent, Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers, on carload freight traffic to or from competitive points authorized in Rule 7 and 7-A, quoted in parargraphs XII and XIII of this petition, are the rates between Nashville, Tenn., and Vine Hill and Baxter Heights, Tenn., published and filed with this Honorable Commission in Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers, Nashville Local Tariff No. 17-E, I. C. C. No. A-323, effective June 25, 1913, on page 6, stations 28 and 29, and are as follows:

	C	LAS	SES	
In	Cents	Per	100	Pounds

1	2	3	4	5	6	A	B	C	D	E	H	(F Per)	L	M	N	0	R
12	10	9	8	6	6	6	6	21	24	6	6	(5 Bbl.)	4	4	3	3	3

COMMODITIES

Live Stock, C. L., in Dollars and Cents per Car.

Iron, Special, C. L. in cents per 100 Pounds	Horses and Mules	Cattle	Hogs Single Deck	Sheep Single Deck
6	\$5 00	\$5 00	\$6 00	\$5 00

Logs (except walnut, cherry and cedar), min. wt., 30,000 lbs., 2½ cents per 100 lbs.

Lumber (see Item 10, page 5 of tariff), 3 cents per 100 lbs.

Governed by Southern Classification No. 39, I. C. C. No. 17, issued by W. R. Powe, Agent, with Exceptions shown therein under Note 49, Supplements thereto or reissues thereof.

That said switching charges on competitive carload freight traffic received from and delivered to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway are unreasonable in and of themselves in violation of Section 1 of the Act to Regulate Commerce, as amended, and relatively unjust and unreasonable as compared with the charges made for performing the same services in switching non-competitive carload freight traffic at Nashville, Tenn., and in switching competitive and non-competitive carload freight traffic at other points on the Tennessee Central Railroad, thus subjecting competitive carload freight

traffic received from or delivered to the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway at Nashville, Tenn., to undue and unreasonable prejudice and disadvantage, in violation of Section 3 of the Act to Regulate Commerce, as amended.

XV.

That physical connections now exist between the above named respondents' lines, terminal yards and tracks at points within what is known as "the switching limits of Nashville, Tenn.," and it is possible and practicable to interchange, without restrictions, carload freight traffic from the lines, terminals, yards or tracks of one respondent to the line, terminals, yards or tracks of any other of said respondents by switching movement or service.

XVI.

That this Honorable Commission, in the case of the Traffic Bureau of Nashville v. Louisville & Nashville Railroad Company, et al., I. C. C. Docket No. 4604, 28th I. C. C. Rep., pages 533 to 542, decided December 9, 1913, held that the practice of respondents, Louisville & Nashville Railroad Company, Louisville & Nashville Terminal Company, Nashville, Chattanooga & St. Louis Railway, and Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers, governing the switching of coal at Nashville, Tenn., is unreasonable, and, further, that the practice of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway is unjustly discriminatory.

That at a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of December, 1913, the following order with reference to the switching of coal at Nashville, Tenn.,

was made in said case:

"That defendants, Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby, notified and required to cease and desist, on or before February 15, 1914. and for a period of not less than two years thereafter to abstain, from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., than they contemporaneously maintain with respect to similar shipments of coal from and to their respective tracks."

And it was further ordered:

"That said defendants be, and they are hereby, notified and required to establish, on or before February 15, 1914, upon notice to the Interstate Commerce Commission and to the general public by not less than five days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce, and for a period of not less than two years after February 15, 1914, to maintain and apply to the interswitching of interstate carload shipments of coal at Nashville, Tenn., a practice which will permit the interswitching of such shipments from and to the lines of each and every defendant."

XVII.

Petitioners allege that by reason of the facts stated in the foregoing paragraphs, the receivers and shippers of freight located at Nashville, Tenn., and the City of Nashville, itself, have been subjected to the payment of rates for switching services which were, when exacted, and still are, unjust and unreasonable in violation of Section 1 of the Act to Regulate Commerce, as amended, and unduly discriminatory, in violation of Section 3 thereof.

XVIII.

Wherefore, petitioners pray that respondents may be severally required to answer the charges herein; that after due hearing and investigation, an order be made commanding said respondents, and each of them, to cease and desist from the aforesaid violations of said Act to

Regulate Commerce, and establish and put in force and apply as maximum rates in the future, for the switching of interstate carload competitive and non-competitive freight traffic in lieu of the rates named in paragraph VI, VII, VIII, IX, X, XII, XIII and XIV hereof, such other rates as this Honorable Commission may deem reasonable and just; and

That such other and further order or orders be made as the Commission may consider proper in the premises,

and petitioners' cause may appear to require.

Dated at Nashville, Tenn., this tenth day of January, Nineteen Hundred Fourteen.

	•	A
		City Attorn
TRAF	гіс В	UREAU OF NASHVILLE

EXHIBIT B.

INTERSTATE COMMERCE COMMISSION. No. 6484.

CITY OF NASHVILLE, Et. Al., COMPLAINANTS,

VS.

LOUISVILLE & NASHVILLE RAILROAD CO., Et Al., DEFENDANTS.

ANSWER OF LOUISVILLE & NASHVILLE RAILROAD COMPANY.

The Louisville & Nashville Railroad Company, one of the defendants in the above-entitled case, presents this its separate answer to the complaint filed herein:

I.

For answer to the first paragraph this defendant says that it has not sufficient knowledge or information to enable it to either admit or deny the allegations therein.

II.

For answer to prargraph two this defendant admits that it is a common carrier as alleged in said paragraph of the complaint.

III.

This defendant admits the allegations contained in paragraph three to be correct with the exception of the following errors, evidently made through inadvertence: At page three, thirteenth line from the bottom, the

word "hauling" should be "handling."

At page four, first line, after the word "main" should be inserted "and side tracks, switches, cross overs, and turn outs and other."

At page four, ninth line from the bottom the last sentence should read "that it also owns 30.82 miles of sidings, yard tracks and second track."

At page four, fourth line from the bottom, December

3, 1902, should be substituted for "July 1, 1896."

IV.

As the allegations of paragraph four of the complaint are not directed against this defendant, no answer thereto is made.

V.

This defendant admits the allegations of paragraph five of the complaint as to stock ownersip to be true, but denies that it thereby, or at all, controls said Nashville, Chattanooga & St. Louis Railway Company. Defendant says that the kinship between this defendant and its codefendant, the Nashville, Chattanooga & St. Louis Railway, growing out of the fact that one owns a majority of the stock of the other, was one of the causes inducing the formation of the manifestly economical arrangement for acquiring, maintaining and operating joint terminals at Nashville, set forth in the tenth paragraph of this answer, though similar joint arrangements are customarily made between companies having no such relation to each other; but it says that the Nashville, Chattanooga & St. Louis Railway Company is wholly separate from and independent of the Louisville & Nashville Railroad in its management, operation and general policies.

VI.

This defendant admits that the quotation of its switching rules as contained in its Tariff G. F. O. 1930, I. C. C. A-12658, is correctly copied into paragraph six of the

petition, except in respect to Rule 9-A as contained on page nine of the petition, wherein there has been omitted, following Nashville, Tenn., seventh line from the bottom, these words: "whether such charges are absorbed by this company or added to its rates to and from Nashville, Tenn."

This defendant denies that the absorption of switching charges authorized in Rule 41/2, quoted on page nine of the complaint, gives undue or unreasonable preference or advantage to carload competitive grain traffic to and from the Hermitage Elevator or to the Hermitage Elevator itself, or that it subjects all or any carload competitive freight at Nashville, Tenn., or all or any other industries, warehouses or elevators situated on the sidings or tracks of, or private sidings which connect with, the Tennessee Central Railroad or the Nashville Terminal Company of Nashville, Tenn., to undue or unreasonable preference or disadvantage, or is in violation of the Act to Regulate Commerce. Defendant says that it has not published in its tariff that it will absorb said switching charge upon competitive grain traffic to and from industries on the Tennessee Central Railroad other than said Hermitage Elevator, because said company does not switch such competitive traffic for this defendant to and from other industries on its line; but this defendant states that it is ready and willing to absorb the switching charge of the Tennessee Central Railroad Company upon all competitive traffic whether grain or other sorts moving to and from any and all other industries upon that company's line which it will switch for defendant.

This defendant denies that said switching charge of \$3.00 per car on non-competitive freight traffic authorized by Rule 15 (A), quoted on page ten of the complaint, between industries, warehouses and elevators situated on private sidings of the "Nashville Terminals," within terminal limits, and the junction with the Tennessee Central Railroad at Baxter Heights, Tenn., is unjust or unreasonable in and of itself, or relatively unjust or unreasonable as compared with the switching charge for similar service performed at other points on the Louisville & Nashville Railroad, or that it subjects non-competitive carload freight traffic received from or

delivered to the Tennessee Central Railroad at Nashville, Tenn., to undue or unreasonable prejudice or disadvantage or is in violation of Section 1 of the Act to Regulate Commerce.

This defendant admits that at the time this complaint was filed said tariff excepted from its provisions coal from the Tennessee Central Railroad, whether coming from a competitive or non-competitive point, but denies that said practice subjected the traffic of coal to undue or unreasonable prejudice or disadvantage, in violation of the Act to Regulate Commerce.

This defendant says, however, that since the filing of the complaint herein it has amended the tariff above mentioned so that the coal therein described is no longer excepted from its provisions. This defendant further denies that Rule 15 (B), quoted on page 10 of the complaint herein, subjects carload freight traffic when from or destined to locations on the Tennessee Central Railroad Company or the Nashville Terminal Company in Nashville, Tenn., or said locations themselves to undue or unreasonable prejudice or disadvantage in violation of the Act to Regulate Commerce.

VII.

This defendant denies all the allegations contained in paragraph seven of the complaint.

VIII.

As the allegations of paragraph eight of the complaint are not directed against this defendant no answer thereto is deemed necessary.

IX.

As the allegations of paragraph nine of the complaint are not directed against this defendant no answer thereto is deemed necessary.

X.

For answer to paragraph ten, this defendant admits that its terminal conditions and practices are substan-

tially as therein set out, namely, that competitive carload freight traffic destined to or forwarded from Nashville. Tennessee, by way of either the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway Company, is switched to or from switches, tracks, industries, warehouses and elevators reached by or connecting with the individually owned switches, tracks and terminal facilities of the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway Company, within terminal limits at Nashville, Tennessee, without additional charge to the consignee or consignor; but that like freight destined to or forwarded from Nashville, by way of the Tennessee Central Railroad is subjected to the switching charges set out in paragraphs seven and eight of the complaint. It denies, however, that said switching practice is unreasonable and denies that by virtue thereof said carload freight traffic when destined to or forwarded from Nashville by way of the Tennessee Central Railroad is subjected to undue or unreasonable prejudice or disadvantage in violation of the Act to Regulate Commerce.

For further answer to so much of the complaint, and particularly the tenth paragraph thereof, as alleges that the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company switch for each other without additional charge to the consignee or consignor and yet make a switching charge in the case of similar switching to or from the point of interchange with the Tennessee Central, this defendant denies that they switch for each other except as shown in this paragraph, and it alleges that said practice as performed is not unlawful or discriminatory, but is proper and lawful because of the following facts:

The Louisville & Nashville Terminal Company, a corporation duly organized under the laws of the State of Tennessee, and owner of certain terminal facilities in Nashville, Tenn., consisting of a union station, freight station, 1.07 miles of main track, 30.82 miles of sidings, yard tracks and second tracks, by a certain lease dated June 15, 1896, and a modification thereof, dated December 3, 1902, leased to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company all of its terminal property and facilities, including those last above mentioned for a term

of 99 years from July 1, 1896. Under the terms of said lease, copies of which will be exhibited at the hearing, the two lessees were given full and equal rights to the use and enjoyment of all said stations, tracks and terminal facilities. In addition to the stations, tracks and other terminal facilities of the Louisville & Nashville Terminal Company, leased as above set out, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company own certain other tracks respectively, within the switching limits of the city of Nashville, which had physical connections with said Louisville & Nashville Terminal Company's tracks and with each other, and accordingly, as a matter of convenience and economy in the operation of said various terminal tracks and facilities at Nashville, the said Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company on August 15, 1900, entered into a certain written contract, copy of which will be exhibited at the hearing if desired, by the terms of which, for mutually valuable considerations. said two companies leased and granted each to the other trackage rights over its individually owned tracks, side tracks and terminal facilities, inside the switching limits of Nashville, and the two companies further agreed to jointly operate and maintain said terminals. In them were included the following property and facilities:

(a) All the property, improvements, buildings, erections and superstructures leased from the Louisville & Nashville Terminal Company, comprising about 1.07 miles of main track and 30.82 miles of side track, a union passenger station building and its appurtenances, baggage and express buildings, freight stations, roundhouse and coaling station, water tanks, office buildings, main and side tracks, and all and singular the terminal facilities of every kind belonging to said Terminal Company;

(b) The following property contributed to the joint

arrangement by the Louisville & Nashville Railroad Company:

1. So much of the main and all the side and spur tracks and all erections, buildings, bridges and all appurtenances and property lying and being between the northerly line of the property of the Carter Shoe Factory, being 1,320 feet south of Mile Post 183 of the Second Division of the Main Stem, and the line of the Louisville &

Nashville Terminal Company at the south side of Gay Street.

2. So much of the main and all side and spur tracks, together with all and singular the shops, buildings, erections, superstructures and bridges thereunto appurtenant and belonging, lying and being between the line of the property of the Louisville & Nashville Terminal Company on the north side of Spruce Street and the yard limit board south of South Nashville, being at Mile Post 189 on the Nashville & Decatur Division.

(c) The following property contributed to the joint arrangement by the Nashville, Chattanooga & St. Louis

Railway Company:

1. All main, side and spur tracks of the Northwestern or Nashville Division from Cedar Street west to the end of the double track at the shops of the N., C. & St. L. R'y, together with all erections, buildings, bridges and all appurtenances and property lying and being between

said points.

2. The West Nashville Branch extending from N., C. & St. L. new shops to Cumberland River Wharf, including all side and spur tracks, together with all erections, buildings, bridges and all appurtenances and property lying and being between said points, save and except the new shop and Centennial grounds, and the tracks, buildings and superstructures thereupon.

3. So much of the main track of the Chattanooga Division and all sidings, and spur tracks lying and being between the north line of Spruce Street and South Cherry Street crossing, together with all erections, buildings,

bridges and superstructures thereupon.

This defendant says that by the terms of said agreement for the joint operation of said terminal properties, called for convenience the Nashville Terminals, a plan was adopted for employing a superintendent, station master, master of trains, road master, supervisor of building or buildings, master mechanic, ticket agents, baggage master and other subordinate employes, agents and servants, as well as for procuring for their joint use and account the necessary equipment for the operation of said terminals and that pursuant to agreement the two companies have been continuously since August 15, 1900, and still are, operating said terminals jointly by means of the association above described, upon an agreed and satisfac-

tory basis of division of expenses. It was further understood and agreed by and between the parties to said contract that the rights, privileges, uses and enjoyments of all the property in the Nashville Terminals, as hereinbefore set out, in and by said two companies were, and they still are, the same, equal and joint, and none other except that each company retains the separate use of its separate freight stations and appurtenant tracks, and the Louisville & Nashville Railroad Company agreed separately to maintain and operate for its own use the termi-

nal roundhouse and appurtenances thereto.

This deefndant says that by the terms of said agreement uniting said terminal facilities as above set out, each of said companies acquired the absolute possession of and individual right to use the tracks and facilities of the other as well as the tracks and facilities leased from the Louisville & Nashville Terminal Company; that they thereupon had the right as a matter of convenience and economy to jointly maintain and through their joint agents, employes and servants jointly operate the same. This defendant accordingly says that the switching complained of in the complaint between the two roads is not in fact the switching of one for the other, but is the switching done by each over tracks to the use of which it is equally entitled with the other through the means of employes and agencies to whose service it is equally entitled with the other. This defendant says that all the movements of engines and cars herein complained of as free switching between said two companies are movements conducted by the joint employes, eqipment and other joint agencies of the said two companies engaged in operating said terminals. And it says that this arrangement is a proper and valid one and does not constitute an unjust, unreasonable, or any discrimination against or disadvantage to the Tennessee Central Railroad or any other railroad not interested in the above arrangement, to the city of Nashville, or its citizens, and in fact does not constitute a discrimination or disadvantage at all.

The foregoing refers to regular switching in connection with a road-haul service. In the case of intra-terminal movements, the shipper for whom such movement is made pays the Nashville Terminals (which is the name by which the joint association is called for convenience) a

charge which is duly published in the tariffs. The switching charges paid by the Tennessee Central Railroad for services in the Nashville switching limits are also paid to the Nashville Terminals.

The defendant says that the above described arrangement for the maintenance and operation of joint terminals as a matter of economy and convenience to the participating lines, and as a distinct benefit to the public, is usual and customary throughout the country.

XI.

This defendant for answer to paragraph eleven denies all the allegations of said paragraph.

XII.

As the allegations of paragraph twelve of the petition are not directed against this defendant no answer thereto is deemed necessary.

XIII.

As the allegations of paragraph thirteen of the complaint are not directed against this defendant no answer thereto is deemed necessary.

XIV.

As the allegations of paragraph fourteen of the complaint are not directed against this defendant no answer thereto is deemed necessary.

XV.

For answer to paragraph fifteen of the complaint this defendant admits that the physical connections therein mentioned exist, but denies that it is possible or practicable to interchange without restrictions, carload freight traffic from the lines, terminals, yards or tracks of one defendant to the lines, terminals, yards or tracks of any other of said defendants by switching movement or service.

XVI.

For answer to paragraph sixteen this defendant admits that the Interstate Commerce Commission rendered a decision in the case mentioned in said paragraph, but it denies that the practice of this defendant and the other defendants mentioned in said paragraph was or is held to be unreasonable or unjustly discriminatory except only as to the handling of coal, and it says that it has accepted said opinion and order of the Interstate Commerce Commission and has changed its tariffs for both interstate and intrastate shipments so as to conform thereto. It accordingly denies that it is applying any unreasonable or any unjustly discriminatory rates. rules or practices at Nashville, Tenn., with respect to the switching of interstate shipments of coal, as set out in the paragraph therein referred to or any of them, or that it is subjecting interstate shipments of coal at Nashville or coal mines located in the State of Tennessee, or the owners or operators of said mines or the State of Tennessee itself, to any undue or unreasonable prejudice or disadvantage in violation of the Act to Regulate Commerce.

XVII.

For answer to paragraph seventeen this defendant denies that by reason of the alleged facts, or any of them, stated in the preceding paragraphs of the complaint the receivers or shippers of freight located at Nashville, Tennessee, or the city of Nashville itself, have been subjected to the payment of rates for shipping service which were, when exacted, or still are, unjust or unreasonable or unduly discriminatory or in violation of the Act to Regulate Commerce.

Wherefore, having fully answered, this defendant prays that the complaint herein as to it be dismissed.

Henry L. Stone,
John B. Keeble,
Edward S. Jouett,
Attorneys for Defendant, Louisville &
Nashville Railroad Co.

EXHIBIT C.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

I. C. C. DOCKET No. 6484.

CITY OF NASHVILLE, ET AL., COMPLAINANTS,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., DEFENDANTS.

ANSWER OF NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

The Nashville, Chattanooga & St. Louis Railway, one of the defendants in the above-entitled case, for answer to the complaint states as follows:

I.

For answer to the first paragraph of the petition this defendant says that it is without sufficient knowledge or information to enable it to either deny or admit the allegations therein.

II.

For answer to paragraph two of the petition this defendant admits that it is a common carrier, as alleged in said paragraph of the complaint.

III.

This defendant admits the allegations containeed in paragraph three to be correct, with the exception of the following errors, evidently made through inadvertence:

At page three, thirteenth line form the bottom, the word "hauling" should be "handling."

At page four, first line, after the word "main" should be inserted, "and side tracks, switches, cross-overs, and turnouts and other."

At page four, ninth line from the bottom, the last sentence should read, "that it also owns 30.82 miles of sidings, yard tracks, and second track."

At page four, fourth line from the bottom, December 3, 1902, should be substituted for "July 1, 1896."

IV.

As the allegations of paragraph four of the petition are not directed against this defendant, no answer thereto is made.

V.

As the allegations of paragraph five of the petition are not directed against this defendant, no answer thereto is made, with the exception that this defendant denies that in its operation it is controlled by the Louisville & Nashville Railroad Company.

VI.

As the allegations of paragraph six of the petition are not directed against this defendant, no answer thereto is made.

VII.

As the allegations of paragraph seven of the petition are not directed against this defendant, no answer thereto is made.

VIII.

For answer to paragraph eight of the petition, this defendant admits that it has in effect at Nashville, Tenn., and has filed with this Honorable Commission, Terminal Tariff No. 2, I. C. C. No. 1958-A, effective September 1, 1911, publishing rates, rules and regulations governing demurrage, drayage, elevation, feeding, icing, switching, transfer, and other terminal charges at stations on the

Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad.

It also admits the accuracy of the petition respecting rules one and two, published on eighth revised page 44 of Terminal Tariff No. 2, effective December 14, 1913.

This respondent also admits the accuracy of Rule No. 5 as published on eighth revised page 44, and set out in the petition, but states that said rule was cancelled by ninth revised page 44 to said tariff, effective January 25, 1914, and Rule No. 5 is not now in effect.

This defendant also admits the accuracy of Rule No. 8, referred to in the petition as published on eighth revised page 44 of said Terminal Tariff No. 2, but states that said Rule No. 8 was cancelled by amendment to the tariff, said amendment being ninth revised page 44 to Terminal Tariff No. 2, and said Rule No. 8 is not now in effect.

This defendant also admits the accuracy of the allegations respecting the publication on eighth revised page of Terminal Tariff No. 2 of switching charges and regulations to apply on traffic switched between industries, warehouses, and elevators situated on private sidings within terminal limits, and on non-competitive traffic via the Tennessee Central Railroad to and from the junction with the Tennessee Central at shops junction; and also admits that paragraphs 1, 2, and 3 of said eighth revised page are correctly stated in the petition.

This defendant states that Rule No. 5, published on eighth revised page of Terminal Tariff No. 2, has been cancelled by amendent to said tariff, said amendment being ninth revised page 44, effective January 25, 1914.

This defendant denies that said switching charge of \$3 per car on non-competitive carload freight between industries, warehouses, and elevators, situated on private sidings of the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Terminal Company, and the junction with the Tennessee Central Railroad at shops junction is unjust and unreasonable, and relatively unjust and unreasonable, as compared with the charge assessed at other points.

This defendant admits that at the time this petition was filed, said tariff excepted from its provisions coal from the Tennessee Central Railroad when coming from competitive or non-competitive points, but denies that

said practice subjected traffic in coal to undue or unreasonable prejudices or disadvantages in violation of the Act to Regulate Commerce. This defendant, however, states that since the filing of the complaint herein it has amended the tariff so that the coal therein described is no longer excepted from these provisions. This defendant further denies that such exception subjected coal traffic or said locations themselves to undue or unreasonable prejudices or disadvantages in violation of Section 3 of the Act.

This defendant further states that Rule No. 8, quoted on page 17 of the petition, has been cancelled and is not now in effect.

IX.

For answer to paragraph nine of the petition, this defendant admits the publication and filing of ninth revised page 44 to Terminal Tariff No. 2, I. C. C. No. 1958-A, effective January 25, 1914, which cancels Rules No. 5 and No. 8 in eighth revised page 44, and the restoration of Rule No. 9, which latter rule is correctly quoted in the petition.

This defendant denies, however, that the cancellation of Rule No. 8 subjects competitive carload traffic forwarded from or destined to Nashville to unreasonable prejudice or disadvantage in violation of Section 3 of the Act.

This defendant denies that the absorption of switching charges provided by Rule No. 9 of said tariff gives undue and unreasonable preference and advantage to carload competitive grain traffic to and from Hermitage Elevator, or that it constitutes discrimination; defendant would be willing to make like absorptions on grain traffic in carloads when consigned to or forwarded from other elevators on the tracks of the Nashville Terminal Company, were other elevators in existence.

This defendant denies that it switches to and from the Hermitage Elevator, as its tracks do not reach that industry. It delivers the business to and receives it from the Tennessee Central Railroad at the junction of interchange, and the latter company or the Nashville Terminal Company performs switching to and from the ele-

vator.

For answer to paragraph ten this defendant admits that its terminal conditions and practices are substantially as therein set out, namely, that competitive carload freight traffic destined to or forwarded from Nashville, Tenn., by way of either the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway is switched to or from switches, tracks, industries, warehouses, and elevators reached by or connecting with the individually owned switches, tracks, and terminal facilities of the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway within terminal limits at Nashville, Tenn., without additional charge to the consignee or consignor; but that like freight destined to or forwarded from Nashville by way of the Tennessee Central Railroad is subjected to the switching charges set out in paragraphs seven and eight of the complaint. It denies, however, that said switching practice is unreasonable and denies that by virtue thereof said carload freight traffic when destined to or forwarded from Nashville by way of the Tennessee Central Railroad is subjected to undue or unreasonable prejudice or disadvantage in violation of the Act to Regulate Commerce.

For further answer to so much of the complaint, and particularly the tenth paragraph thereof, as alleges that the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway switch for each other without additional charge to the consignee or consignor and yet make a switching charge in the case of similar switching to or from the point of interchange with the Tennessee Central Railroad, this defendant denies that they switch for each other except as shown in this paragraph, but it alleges that said practice as performed is not unlawful or discriminatory, but is proper and lawful because of the following facts:

The Louisville & Nashville Terminal Company, a corporation duly organized under the laws of the State of Tennessee and holder in fee simple or under lease of certain terminal facilities in Nashville, Tenn., consisting of a union station, freight station, 1.07 miles of main track, 30.82 miles of siding, yard tracks and second tracks, by a certain lease dated June

15, 1896, and a modification thereof, dated December 3, 1902, leased to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway all of said terminal property and facilities including those last above mentioned for a term of 99 years from July 1, 1896. Under the terms of said lease, copies of which will be exhibited at the hearing, the two lessees were given full and equal rights, to the use and enjoyment of all said stations, tracks, and terminals. In addition to the stations, tracks, and other terminal facilities held by the Louisville & Nashville Terminal Company, leased as above set out, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway own certain other tracks respectively within the switching limits of the city of Nashville, which had physical connections with the said Louisville & Nashville Terminal Company's tracks and with each other, and accordingly, as a matter of convenience and economy in the operation of said various terminal tracks and facilities at Nashville, the said Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway on August 15, 1900, entered into a certain written contract, copy of which will be exhibited at the hearing if desired, by the terms of which, for mutually valuable considerations, said two companies leased and granted each to the other trackage rights over its individually owned tracks, side tracks, and terminal facilities inside the switching limits of Nashville, and the two companies further agreed to jointly operate and maintain said terminals. In them were included the following property and facilities:

(a) All the property, improvements, buildings, erections, and superstructures leased from the Louisville & Nashville Terminal Company, comprising about 1.07 miles of main track and 30.82 miles of side track, a union passenger station building and its appurtenances, baggage and express buildings, freight stations, roundhouse and coaling station, water tanks, office buildings, main and side tracks, and all and singular the terminal facilities of every kind held by said terminal company.

The following property contributed to the joint arrangement by the Louisville & Nashville Railroad Com-

pany:

So much of the main and all the side and spur cracks and all erections, buildings, bridges, and all appurtenances and property lying and being between the northerly line of the property of the Carter Shoe Company, being 1,320 feet south of mile post 183 of the Second Division of the main stem, and the line of the Louisville & Nashville Terminal Company at the south side of Gay Street.

So much of the main and all side and spur tracks, together with all and singular the shops, buildings, erections, superstructures, and bridges thereunto appurtenant and belonging, lying and being between the line of the property held by the Louisville & Nashville Terminal Company on the north side of Spruce Street and the yard limit board south of South Nashville, being at mile post

189 on the Nashville and Decatur Division.

(c) The following property contributed to the joint arrangement by the Nashville, Chattanooga & St. Louis Railway:

All main, side, and spur tracks of the Northwestern or Nashville Division from Cedar Street west to the end of the double track at the shops of the Nashville, Chattanooga & St. Louis Railway, together with all erections, buildings, bridges, and all appurtenances and prop-

erty lying and being between said points.

The West Nashville Branch, extending from the new shops of the Nashville, Chattanooga & St. Louis Railway to Cumberland River wharf, including all side and spur tracks, together with all erections, buildings, bridges and all appurtenances and property lying and being between said points, save and except the new shop and centennial grounds and the tracks, buildings, and superstructures thereupon.

So much of the main track of the Chattanooga Division and all sidings and spur tracks lying and being between the north line of Spruce Street and South Cherry Street crossing, together with all erections, buildings.

bridges, and superstructures thereupon.

This defendant says that by the terms of said agreement for the joint operation of said terminal properties. called for convenience the Nashville Terminals, a plan was adopted for the joint employment of a station mas-

ter, master of trains, road master, supervisor of building or buildings, master mechanic, ticket agents, baggagemaster, and other subordinate employes, agents, and servants, as well as for procuring for their joint use and account the necessary equipment for the operation of said terminals, and that pursuant to agreement the two companies have been continuously since August 15, 1900, and still are, operating said terminals jointly by means of the association above described, upon an agreed and satisfactory basis of division of expenses. It was further understood and agreed by and between the parties to said contract that the rights, privileges, uses, and enjoyments of all the property in the Nashville Terminals, as hereinbefore set out, in and by said two companies were, and they still are, the same, equal and joint, and none other except that each company retains the separate use of its separate freight stations and appurtenant tracks, and the Louisville & Nashville Railroad Company agreed separately to maintain and operate for its own use the terminal roundhouse and appurtenances thereto.

This defendant says that by the terms of said agreement uniting said terminal facilities as above set out. each of said companies acquired the absolute possession of and individual right to use the tracks and facilities of the other as well as the tracks and facilities leased from the Louisville & Nashville Terminal Company; that they thereupon had the right as a matter of convenience and economy to jointly maintain and through their joint agents, employes, and servants jointly operate the same. This defendant accordingly says that the switching complained of in the complaint between the two roads is not in fact the switching of one for the other, but is switching done by each other over tracks to the use of which it is equally entitled with the other through the means of employes and agencies to whose service it is equally entitled with the other. This defendant says that all the movements of engines and cars herein complained of as free switching between said two companies are movements conducted by the joint employes' equipment and other joint agencies of the said two companies engaged in operating said terminals. And it says that this arrangement is a proper and valid one and does not constitute an unjust, unreasonable, or any discrimination against or disadvantage to the Tennessee Central Railroad or to any other railroad, not interested in the above arrangement, to the city of Nashville, or its citizens, and in fact does not constitute a discrimination or disadvantage at all.

XI.

This defendant for answer to paragraph eleven denies all the allegations of said paragraph.

XII.

As the allegations of paragraph twelve of the petition are not directed against this defendant no answer thereto is deemed necessary.

XIII.

As the allegations of paragraph thirteen of the petition are not directed against this defendant no answer thereto is deemed necessary.

XIV.

As the allegations of paragraph fourteen of the petition are not directed against this defendant no answer thereto is deemed necessary.

XV.

For answer to paragraph fifteen of the petition, this defendant admits that the physical connections therein mentioned exist, but denies that it is possible or practicable to interchange, without restrictions, carload freight traffic from the lines, terminals, yards or tracks of one defendant to the lines, terminals, yards or tracks of any other of said defendants by switching movement or service.

XVI.

For answer to paragraph sixteen of the petition, this defendant admits that the Interstate Commerce Commission rendered a decision in the case mentioned in said

paragraph, but denies that the practice of this defendant and the other defendants mentioned in said paragraph, was or is held to be unreasonable or unjustly discriminatory except only as to the handling of coal, and it says that it has accepted the said opinion and order of the Interstate Commerce Commission and has changed its tariffs for both intrastate and interstate shipments so as to conform thereto. It accordingly denies that it is applying any unreasonable or unjustly discriminatory rates, rules or practices at Nashville, Tenn., with respect to interstate or intrastate shipments of coal at Nashville, or coal mines located in the State of Tennessee, or the owners of said mines, or the State of Tennessee itself, or any undue or unreasonable prejudices or disadvantages in violation of the Act to Regulate Commerce.

XVII.

For answer to paragraph seventeen of this petition, this defendant denies that the receivers and shippers of freight located at Nashville, Tenn., and the city of Nashville itself, have been subjected to payment of rates for switching charges which were, when exacted, unjust and unreasonable and in violation of Section One of the Act to Regulate Commerce, as amended, etc.

Therefore, having fully answered, this defendant prays that the complaint herein as to it be dismissed.

CLAUDE WALLER,
J. D. B. DE BOW,
R. WALTON MOORE,
Attorneys for Defendant Nashville, Chattanooga & St. Louis Railway.

EXHIBIT D.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

CITY OF NASHVILLE, ET AL., - - - Complainants, versus

LOUISVILLE & NASHVILLE RAILROAD, ET AL., - Defendants.

ANSWER OF THE LOUISVILLE & NASHVILLE TERMINAL COMPANY.

The Louisville & Nashville Terminal Company for answer to the complaint herein, and to each paragraph thereto that in anywise relates to it, denies any and all allegations of the complaint with reference to any connection upon its part with the switching policy at Nashville and says that it leased all of its property and facilities at that place to its co-defendants, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway by a certain lease dated June 15, 1896, and modified by supplemental lease agreement of December 3, 1902, and that since said original date it has had no participation direct or indirect with any of the matters or subjects referred to in the complaint herein.

Wherefore, having fully answered this defendant prays that the complaint herein as to it be dismissed.

J. B. KEEBLE, E. S. JOUETT,

Attorneys for Defendant, Louisville & Nashville Terminal Co.

INTERSTATE COMMERCE COMMISSION. WASHINGTON.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held March 25 and 26, 1914, at Nashville, Tenn., before Commissioner Meyer, in case No. 6484, City of Nashville and others against Louisville & Nashville Railroad Company and others (being the only hearing in the case), of all the exhibits filed at and subsequent to the hearing, and of cross-interrogatories and answers thereto, including exhibits by W. P. Bruce dated May 20, 1914, the originals of which are now on file and of record in the office of this Commission.

[Seal]

IN WITNESS WHEREOF, I have herunto set my hand and affixed the Seal of said Commission, this 29th day of March, A. D. 1915.

> George B. McGinty, Secretary of the Interstate Commerce Commission.

(This Transcript of Evidence entitled "Exhibit E with the Petition" is, for convenience, divided by plaintiffs into two volumes of Exhibits, which constitute, respectively, Vol. II, containing all testimony and other writing, and Vol. III, containing the maps and blue prints. This certificate is accordingly attached to each.)

EXHIBIT E.

BEFORE THE

Interstate Commerce Commission.

CITY OF NASHVILLE, ET AL., Complainants, vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., - - Defendants.

Nashville, Tennessee, March 25, 1914, Ten o'clock A. M. BEFORE:

COMMISSIONER MEYER:

APPEARANCES:

ALBERT G. EWING and

F. M. GIRARD (Nashville, Tennessee), appearing for the City of Nashville.

T. M. HENDERSON (Nashville, Tennessee) appearing for Traffic Bureau of Nashville.

EDWARD S. JOUETT (Louisville, Kentucky), appearing for Louisville & Nashville Railroad Company.

J. D. B. DeBOW (Nashville, Tennessee), appearing for Nashville, Chattanooga & St. Louis Railway Company.

FRANK W. GWATHMEY (Colorado Building, Washington, D. C.) appearing for the Nashville, Chattanooga & St. Louis Railway Company.

CLAUDE WALLER (Nashville, Tennessee), appearing for Nashville, Chattanooga & St. Louis Railway Company.

WALTER STOKES (Nashville, Tennessee), appearing for Tennessee Central Railroad Company.

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PROCEEDINGS.

Commissioner Meyer: Gentlemen, we have set for hearing this morning Docket No. 6484, City of Nashville and Traffic Bureau of Nashville against the Louisville & Nashville Railroad Company and others. I understand that appearances have been entered, but if there are any present who have not yet done so they may enter their appearances during the day.

We will proceed with the testimony on behalf of the

petitioners.

5

6

Mr. Henderson: I will call Mr. Murray.

Mr. Jouett: Before that I wish to say that I desire to file an amended answer merely correcting the description of the property of the Louisville & Nashville Terminal Company. I find it is not exactly correct since we got the information from the engineers. It will not change the issues any. We will file that during the day.

Commissioner Meyer: It may be done.

Mr. Gwathmey: That is true also of the Nash-

ville, Chattanooga & St. Louis.

Commissioner Meyer: Mr. Girard, I understand you are going first.

Mr. Henderson: Mr. Murray, will you be sworn?
W. L. Murray was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Murray, what is your residence and occupation?

Mr. Murray: Occupation is City Auditor.

Mr. Henderson: How long have you been in that position, Mr. Murray?

Mr. Murray: Since November 1, 1913.

Mr. Henderson: Were you connected with the city in any way prior to that time, and if so, in what capacity and how long?

Mr. Murray: About five years ago I was elected City Recorder and Auditor, and since the new Commissioners

came in I have since been Auditor.

Mr. Henderson: Are you familiar with the record of the city as to the franchises and rights of way that have been granted from time to time?

Mr. Murray: Yes, sir.

Mr. Henderson: Will you please state whether or not the Louisville & Nashville Railroad Company, the Nashville, Chattanoga & St. Louis Railway Company, the Tennessee Central Railroad Company, the Louis-

ville & Nashville Terminal Company, or the Nashville Terminal Company, have ever paid the city anything for their various franchises and rights of way that have been granted in and around the city?

Mr. Jouett: We object to that as immaterial.

Commissioner Meyer: Well, the objection may be noted and the witness may briefly answer.

Mr. Murray: No, sir; no compensation was ever paid

for any right of way while I was there.

Mr. Henderson: You are familiar with the old records, are you not?

Mr. Murray: Yes, sir.

Mr. Henderson: Can you say whether there has ever been any compensation paid?

Mr. Murray: Not to my knowledge, no, sir.

Mr. Henderson: That is all.

Mr. Jouett: I do not care to ask him any questions. (Witness excused.)

C. C. THACKER was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

8 Mr. Henderson: Mr. Thacker, what is your residence and occupation?

Mr. Thacker: Nashville, Tennessee, I am assistant Secretary of the Board of Commissioners of the City.

Mr. Henderson: Has the Board of Commissioners had any correspondence with the railroads in reference to this switching question?

Mr. Thacker: Yes, sir.

Mr. Henderson: Will you file the original letter from the Secretary of the City Commissioners asking that this arrangement be made effective, as an exhibit to your testimony? That is, the first two letters.

(The document in question so offered and identified was received in evidence and thereupon marked Complainants' Exhibit No. 1, Witness Thacker, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Thacker Exhibit No. 1.

Nashville, Tenn., Nov. 25, 1913.

Hon. Jno. B. Keeble, Dist. Atty., Nashville, Tenn.

Dear Sir:

Your letter of the 25th addressed to Mayor Howse relative to the inability of Mr. Addison R. Smith, Third Vice President of the Louisville & Nashville Railroad Co. to be present at the meeting of the Board of Commissioners today to discuss with them the matter of interchange of switching with the Tennessee Central Railroad, was read to the Commission in session this forenoon.

I am directed by the Board to inform you that they will grant the time requested to postpone until two weeks hence, or until Tuesday Dec. 9, 1913.

Yours Truly,

Asst. Sec'y. Board of Commissioners.

(COPY)

Thacker Exhibit No. 1.

Nashville, Tenn., Nov. 4, 1913.

Hon. Claude Waller,

Genl. Counsel N. C. & St. L. R'y.

Hon. H. F. Smith,

V. Pres. & Traffic Mgr. N. C. & St. L. R'y.

Hon. Jno. Bell Keeble,

Dist. Atty. L. & N. R. R. Co. Nashville, Tenn.

Gentlemen:

The Board of Commissioners of the City of Nashville, in compliance with request of the L. & N. R. R. Co., the N. & C. R. R. Co., and the L. & N. Terminal Co., through their representatives, that specific statement be made of what was desired of the above companies, ask—

That the L. & N. R. R. Co., the L. & N. Terminal Co., and the N. C. & St. L. R'y switch carload freight arriving at Nashville via the Tennessee Central Railroad, to industries, warehouses and elevators located on sidings or tracks of, or private sidings which connect with, the L. & N. R. R. Co., the L. & N. Terminal Co., and the N. C. & St. L. R'y, at a reasonable charge per car, regardless of the contents of the car or the point of origin of the shipment, that is whether the car originates at a com-

petitive or a non-competitive point, or whether the car contains freight which is now switched at competitive switching rates, or freight which is now excepted in the present switching tariffs, and which is not switched at any price, and that the present rule of the L. & N. R. R. Co., and the N. C. & St. L. R'y, prohibiting the switching at any price of cars between an industry, warehouse or elevator, situated on the terminals of the L. & N. R. R. Co. and the L. & N. Terminal Co., or the N. C. & St. L. R'y on the one hand, and an industry, warehouse or elevator on the Tennessee Central Railroad or the Terminal Co., on the other hand, be eliminated, and this switching service performed at a reasonable charge per car, this charge to fixed in line with the charges made at other points for performing similar service.

The foregoing statement prepared by the City Attorney was unanimously adopted by the Board of Commissioners in session on Nov. 4, and I was directed by them to invite you to meet with them at 10 o'clock A. M. Tuesday, Nov. 25, for the purpose of discussing the above matter with a view of having you gentlemen decide on some plan or agreement relative to the interchange of switching between the T. C. R. R. Co., and the Companies you represent that will be fair and just to all the Railroads and that will give the business people of Nashville the relief they have so long sought and so badly

need.

Yours truly,

Sec'y.
Board of Commissioners.

Mr. Jouett: Let us see a copy of that, please.

Mr. Henderson: I will ask you to file next the answer received from Keeble, District Attorney of the Louisville & Nashville Railroad Company with reference to that same matter. This will be your exhibit number two.

9 (The document in question so offered and identified was received in evidence and thereupon marked Complainants' Exhibit No. 2, Witness Thacker, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Thacker Exhibit No. 2.

Nashville, Tenn., Nov. 25, 1913.

Hon. Hilary E. Howse, Mayor,

Nashville, Tenn.

Dear Sir:

Mr. Addison R. Smith, Third Vice-President of the Louisville & Nashville R. R. Co., who has charge particularly of traffic matters, can not be present today to discuss the request made by the Commissioners of Nashville of the Louisville & Nashville R. R. Co., and the Nashville, Chattanooga & St. Louis R'y, to exchange switching with the Tennessee Central. He was unexpectedly called to Washington to attend a conference in reference to rate matters that suddenly arose. This conference was so important that he was compelled to attend. I do not feel able to present these matters before the Commission or to myself, and I would appreciate it if you would continue this case for two weeks so that Mr. Smith may be able to be present and be able to discuss this matter with the Commissioners of the City.

Judge Waller is here in my office and joins with me in

this request.

Yours truly,

JNO. B. KEEBLE, District Attorney.

Mr. Henderson: Mr. Thacker, did the representatives of these railroads finally appear before the board of City Commissioners in response to this request?

Mr. Thacker: Yes, sir.

Mr. Henderson: Was that request granted or denied?

Mr. Thacker: Denied.

Mr. Henderson: What action was then taken by the Board of City Commissioners?

Mr. Thacker: A resolution was introduced.

Mr. Henderson: I will get you to file that as an exhibit to your testimony.

(The resolution so offered and identified was received in evidence and thereupon marked Complainants' Exhibit No. 3, Witness Thacker, received in evidence March 25, 1914, and is attached hereto.)

THACKER EXHIBIT No. 3.

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NASHVILLE:

SECTION 1. That the Law Department of the City of Nashville is hereby authorized and directed to join the Traffic Bureau of the City of Nashville in a petition asking reciprocal switching rates and arrangements between the several railroads and terminal companies in and entering Nashville, to the Interstate Commerce Commission, and to prosecute the same.

SECTION 2. Be it further resolved, That this resolution take effect from and after its adoption, the wel-

fare of the City requiring it.

Introduced by THE BOARD OF COMMISSIONERS.

Approved as to form: By A. G. Ewing, Jr., City Atty. Adopted January 6, 1914. Approved January 6, 1914. H. E. Howse, Mayor.

I hereby certify that the above is a true and correct copy of Resolution No. 22, introduced by the Board of Commissioners, adopted January 6, 1914, and approved by the Mayor, H. E. Howse, on January 6, 1914.

Witness my hand and official seal of the City, this the

21st day of March, 1914, at Nashville, Tennessee.

J. W. Dashiell, Secretary to Board of Commissioners.

(SEAL)

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Mr. Henderson: That is all I have from Mr. Thacker.
Any cross-examination?

Mr. Gwathmey: No. (Witness excused.)

Mr. Henderson: I will call Mr. Clark.

G. F. Clark was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: What is your residence and occupation?

Mr. Clark: I live at 702 12th Street, East Nashville, Chief Clerk to the present Board of Commissioners.

Mr. Henderson: You were subpoenaed here today to testify in this case?

Mr. Clark: I was summoned.

Mr. Henderson: Were you at any time connected with any of the railroads in Nashville?

Mr. Clark: The Louisville & Nashville.

Mr. Henderson: How long were you with the Louisville & Nashville Railroad at Nashville and in what capacity?

Mr. Clark: About four years, local freight agent.

Mr. Henderson: Local freight agent? Are you familiar generally with the location of the various industries in Nashville on the terminals of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis?

Mr. Clark. A great many of them, yes, sir.

Mr. Henderson: Were you familiar with the switching rates and rules in effect during the time you were with those roads, governing the competitive and non-competitive freight?

Mr. Clark: Yes, sir.

Mr. Henderson: From your general knowledge what would you say was the distance from Baxter Heights, or Shops Junction, to the Penitentiary?

Mr. Clark: Between 21/2 and 3 miles.

Mr. Henderson: That would be the longest switch the Nashville, Chattanooga & St. Louis Railway would have from Baxter Heights to industries in West Nashville?

Mr. Clark: Well, there is a switch a little farther beyond the penitentiary, the Baxter farm; it is about a half a mile farther; about 3 to 3½ miles to that point.

Mr. Henderson: That would be the maximum dis-

tance then?

Mr. Clark: Yes, sir.

Mr. Henderson: Is it or is it not a fact that the majority of the industries are intermediate between Shops Junction and the penitentiary?

Mr. Clark: In West Nashville, yes, sir.

Mr. Henderson: Would it be true that the bulk of the business, then, would be switched less than the maximum?

12 Mr. Clark: Oh, yes.

Mr. Henderson: During the time you were connected with the Louisville & Nashville Railroad, did it ever happen that cars for competitive points would reach Nashville via the Louisville & Nashville and Nashville, Chattanooga & St. Louis, consigned to firms and industries on the Tennessee Central?

Mr. Clark: You are speaking of the Louisville & Nashville only?

Mr. Henderson: I mean the Louisville & Nashville or Nashville, Chattanooga & St. Louis, either one, going

to a man exclusively on the Tennessee Central?

Mr. Clark: I was not connected with the Nashville, Chattanooga & St. Louis. I was connected with the Louisville & Nashville.

Mr. Henderson: Well, confine your answer to the

Louisville & Nashville, then?

Mr. Clark: What is the question?

Mr. Henderson: During the time that you were connected with the Louisville & Nashville did it ever happen that cars from competitive points consigned to firms located on the Tennessee Central at Nashville would arrive at Nashville via the line of the Louisville and Nashville Railroad?

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Mr. Clark: Yes, sir; many cases.

Mr. Henderson: How were those cases generally handled and how were the charges usually adjusted?

Mr. Clark: Well, you see, at the time the Interstate Commerce Commission had a ruling on paying the drayage when we were not able to ship those cars. By the dray arrangement we would have to make some delivery provided the matter was taken up first.

Mr. Henderson: That applied only on cars where the bill of lading specifically showed the routing via the

Tennessee Central? Mr. Clark: Yes, sir.

Mr. Henderson: Well, where there was no routing shown, who paid the drayage or switching?

Mr. Clark: I suppose the consignee; they would have

to take care of the switching.

Mr. Henderson: The railroad did not pay it when it was not routed?

Mr. Clark: No. sir.

Mr. Henderson: While you were with the Louisville & Nashville did you have anything to do with keeping the records of cost of switching cars in terminals? 14 Mr. Clark: Yes, sir.

Mr. Henderson: That was in your department? Mr. Clark: From the Louisville & Nashville, yes, sir. Mr. Henderson: From the Louisville & Nashville

only?

Mr. Clark: Yes, sir.

Mr. Henderson: Can you recall approximately what this average cost was a car for switching? Mr. Clark: Now, is that-switching for what purpose? Local points on the Terminal or competitive.

Mr. Henderson: No, my question was, did you have anything to do with keeping the cost of the so-called Nashville Terminals?

Mr. Clark: No, sir.

Mr. Henderson: Switching movement within all the terminals?

Mr. Clark: No, sir.

Mr. Henderson: You had nothing to do with that?

Mr. Clark: No, sir.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: I did not understand that question of drayage, Mr. Clark, please explain that again.

Mr. Clark: If the bill of lading showed Tennessee Central delivery and cars arrived via the Louisville and Nashville we would have to take up the matter first and secure authority to pay that drayage. Then, again, it was the rule—

Mr. Jouett: Take up with whom?

Mr. Clark: Take up with the Louisville & Nashville office. Then afterwards it was the rule that in case the consignee notified us or employed our drays to handle this matter then we could deliver that shipment.

Mr. Jouett: Then, if the bill of lading showed routing via the Tennessee Central the shipper did not have

to pay that drayage, did he?

Mr. Clark: I did not quite catch your question.

Mr. Jouett: Don't you know that in a case of that sort it would be a plain case of misrouting, where the lines that caused the error would have to take care of it, and the drayage would be paid by the railroad so that it would not cost the shipper anything more?

Mr. Clark: I recall two or three instances where the consignees took the freight without first notifying the railroad, and they were compelled to pay the drayage?

Mr. Jouett: How many years were you there?

Mr. Clark: Four years.

Mr. Jouett: And you recall two or three instances of that sort in the four years?

Mr. Clark: Yes, sir.

Mr. Jouett: Well, you know if they had made complaint to the railroad company it must have been paid by the railroad company, do you not?

Mr. Clark: Yes, as a general rule they would notify us that they had bill of lading routing via Tennessee Central and they would surrender to us the bill of lading?

Mr. Jouett: And would you not, then, dray it at your own expense so it would not cost the shipper anything more?

Mr. Clark: Yes, sir. Mr. Jouett: That is all.

Commissioner Meyer: What were these dates?

Mr. Clark: Well, the reason I remember it, it was brought up in court, the consignee brought it up.

Commissioner Meyer: Approximately what were the dates that these things occurred that involved drayage? Mr. Clark: I could not say; it was between 1907 and

1911; I could not say.

Commissioner Meyer: That is all.

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RE-DIRECT EXAMINATION.

Mr. Henderson: The only case where the railroad did pay the drayage was where the bill of lading specifically showed the routing?

Mr. Clark: Yes, sir.

Mr. Henderson: If there was no routing shown the consignee or shipper had to stand for it?

Mr. Clark: The railroad did not.

Mr. Henderson: The railroad did not?

Mr. Clark: No. sir.

Mr. Henderson: That is all.

(Witness excused.)

Mr. Henderson: Mr. Dunn.

R. E. Dunn was called as a witness and having been duly sworn, testified as follows:

CROSS-EXAMINATION.

Mr. Henderson: What is your residence and occupation?

Mr. Dunn: Nashville, Tennessee; occupation is bookkeeper for the Nashville Casket Company?

Mr. Henderson: How long have you been connected with the Nashville Casket Company?

18 Mr. Dunn: Something over 14 years.

Mr. Henderson: On what terminal tracks is the factory of the Nashville Casket Company located?

Mr. Dunn: Louisville & Nashville Railroad.

Mr. Henderson: Are you familiar with the present rules of the Louisville & Nashville governing the switching of LUMBER at Nashville?

Mr. Dunn: Yes, sir.

Mr. Henderson: Have these rules at any time caused you any loss of business or loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Dunn: Well, yes, sir, they have, to some extent, particularly on competitive shipments, that is, lumber originating beyond the Tennessee Central Railroad. On that they charge three cents per hundred on competitive business, and when the car is received usually the Chattanooga Road holds it until they telephone and get instructions that we will stand the switching charges before they will deliver it.

Mr. Jouett: I can not hear you, Mr. Dunn; that last

sentence I did not catch any of that.

Mr. Dunn: They hold the car until we first instruct them to deliver, and that we will pay the transfer charges of three cents per hundred. You understand, the competitive business is three cents per hundred and non-competitive is \$3 a car. Now, if it is \$3 a car, if it is non-competitive business, they deliver that without phoning. If it is non-competitive business, why, they hold the car until they first telephone to know if we will pay this three cents per hundred.

Mr. Henderson: Can you cite any specific instances where you have had to pay this three cents per hundred?

Mr. Dunn: Yes, sir; I think I have some bills of lading and expense bills here that will show.

Mr. Henderson: Will you give those dates and the points of origin and the amount that you have to pay for switching those particular cars?

Mr. Dunn: Here is one, was paid on March 10th, the date on the Chattanooga bill shows it was March 4th. I suppose that was when they first received the car.

Mr. Jouett: What year is that, Mr. Dunn?

Mr. Dunn: 1914; car No. 534642, \$13.62; that was three cents a hundred.

Here is another one of August 14, 1913, car No. 14671, \$10.89.

Another paid on October 16, 1913, car No. 20487; \$10.70. Do you want others?

Mr. Henderson: If you have any more just give those.

Mr. Dunn: October first, 1913, or rather October 7th, it was paid, car number 32752; \$10.41.

Now, there were others but I have only selected a few. Mr. Henderson: Now, did you pay that switching charge in each instance, or was it in some cases charged back to the shipper?

Mr. Dunn: Why, we paid it, but it was charged back

to the shipper and deducted from the settlement.

Mr. Henderson: The shipper had to stand for that three cents per hundred pounds himself?

Mr. Dunn: Yes, sir; the shipper had to stand for the freight. We buy it all delivered on our yard; that is, mostly; we usually buy it delivered on our yard.

Mr. Henderson: None of them was paid by the rail-

roads?

Mr. Dunn: None of them was paid by the railroads, no, sir.

Mr. Henderson: Couldn't you say what the approximate distance is from Baxter Heights to your warehouse by a switching movement?

Mr. Dunn: Well, I would say it was between 21 two and three miles; possibly a little over;

two and a half miles.

Mr. Henderson: That is all I have.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Dunn, how long have you been in

the lumber business here?

Mr. Dunn: Well, I have never been in the lumber business any further than being connected with the concern I am with.

Mr. Jouett: I mean with the casket company?

Mr. Dunn: 14 years and a little over, sir.

Mr. Jouett: And how many times would you say that you have had to pay switching charges on in that time?

Mr. Dunn: I would say 60 per cent of the cars we received. We receive from 225 cars to 300 cars, approximately, a year.

Mr. Jouett: You are situated upon the Louisville &

Nashville tracks?

Mr. Dunn: Yes, sir.

Mr. Jouett: Do you mean that-

Mr. Dunn: That is, we are on the switch of the

Louisville & Nashville Railroad?

Mr. Jouett: Do you mean that this 60 per cent upon which you paid switching charges was both competitive and non-competitive?

22 Mr. Dunn: Yes, sir, both; that is stuff over the Tennessee Central road.

Mr. Jouett: Well, do you direct that the cars be routed for Louisville & Nashville delivery?

Mr. Dunn: No, sir; we usually make our contracts

delivered on our yard.

Mr. Jouett: Don't you know that the Tennessee Central does not switch for the Louisville & Nashville and the Louisville & Nashville does not switch for the Tennessee Central?

Mr. Dunn: Yes, sir; they switch by their paying the switching charged.

Mr. Jouett: Then, why do you not direct the routing by way of the railroad that will switch it on your tracks?

Mr. Dunn: Well, sir, that really should be done, and I should say it is usually done unless overlooked by the

lumber buyer.

Mr. Jouett: When it is done and the consignor is instructed by you to route the shipment for Louisville & Nashville delivery, it comes in over the Louisville & Nashville and is delivered to you without any switching charge, is it not?

Mr. Dunn: That is correct, sir; if it comes over the Louisville & Nashville there is no switching.

23 Mr. Jouett: Then, the paying of this switching charge only occurs when you have not directed the consignor to ship via the Louisville & Nashville, is that right?

Mr. Dunn: No, sir.

Mr. Jouett: Is that not right-

Mr. Dunn: That might apply to competitive business.

Mr. Jouett: I was going to ask you, is that not right

as to competitive business?

Mr. Dunn: That might be correct, sir, if the shipper carried out those instructions, if they were given to come over the Nashville, Chattanooga & St. Louis or the Louisville & Nashville Railroad.

Mr. Jouett: Don't you know that the practice, where rules of this sort are in force and the consignees give instructions to the consignor as to the manner of routing, that the misrouting because of the refusals to obey those instructions are infinitesimal, and don't amount ordinarily to one-tenth of one per cent?

Mr. Dunn: I should think they were very small, yes,

sir.

Mr. Jouett: Very small? Mr. Dunn: Yes, sir.

Mr. Jouett: Then, do you not admit that as to competitive shipments it is the failure either of yourself in failing to give instruction or of the

consignee in failing to obey your instruction of of the the shipments by way of the Louisville & Nashville?

Mr. Dunn: Well, sir, they usually route these shipments the cheapest route; that is the way the bills of lading usually read.

Mr. Jouett: Don't you know that if there is a routing cheaper than the Louisville & Nashville that is con-

sidered non-competitive and the Louisville & Nashville will switch it for the \$3 charge?

Mr. Dunn: Yes, sir.

Mr. Jouett: Then, you have no complaint except as to the \$3 charge as to non-competitive switching, have you?

Mr. Dunn: Well, I could not say that we did have.

Mr. Jouett: Sir?

Mr. Dunn: That would apply all right, sir, if the railroad would always carry out those instructions. You know, frequently the car is—

Mr. Jouett: Don't you know that if the railroad fails to carry out the routing instructions that under the law and the rulings of the Commission they are bound

25 to stand the extra expense?

Mr. Dunn: Yes, sir; I should say they would, yes, sir; they would have to refund it.

Mr. Jouett: Then, does the shipper, in a case of that

sort, lose anything?

Mr. Dunn: No, sir; he does not.

Mr. Jouett: Then, is it not a fact that the complaint merely comes down to the fact that you have to pay three dollars for non-competitive switching?

Mr. Dunn: Yes, sir; I should say so.

Mr. Jouett: Now, do you know anything as to whether that is reasonable, as to what the cost of service is and the number of miles they have to make to put in the empty and take out the load, or vice versa?

Mr. Dunn: Well, sir, I do not, except to my mind they should be willing and able—or able, I should say, to transfer a car of lumber as cheap as a car of any other

commodity.

Mr. Jouett: Is is not a fact that they do transfer or switch or exchange the car of lumber at the same price, \$3 a car?

Mr. Dunn: They do lumber, yes, sir, but they should be able also to switch lumber as cheap as grain or other commodities that they might switch.

Mr. Jouett: Do they not, in fact, just charge three dollars a car for all non-competitive business?

Mr. Dunn: Yes, sir; they charge three dollars a car for non-competitive business.

Mr. Jouett: That is all, sir.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Dunn, would you say it would cost the Louisville & Nashville Railroad any more to switch a car of lumber originating at a competitive point

than it does when originating at a non-competitive point. Mr. Dunn: Not at all, sir; I do not see that there would be any difference at all.

Mr. Jouett: Will you let us examine those bills? Mr. Dunn: Yes, sir, certainly.

(Witness excused.)

Mr. Henderson: I will call Mr. Bonner.

C. F. Bonner was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Bonner, what is your 27 residence and occupation?

Mr. Bonner: My residence is Nashville, Tennessee,

sir; my occupation is furniture manufacturer.

Mr. Henderson: How long have you been in the furniture business at Nashville and on what terminals

has your factory been located during that time?

Mr. Bonner: I have manufactured furniture in Nashville about 12 years, 12 or 13 years; ten or 11 years of that time I was on the Louisville & Nashville Terminals: two years on the Tennessee Central.

Mr. Henderson: Are you familiar with the present rules of the Louisville & Nashville Railroad, the Tennessee Central Railroad, and the Nashville, Chattanooga & St. Louis Railway governing the switching of lumber and furniture at Nashville?

Mr. Bonner: Yes, sir; I think so.

Mr. Henderson: Have these rules at any time caused you any loss of business, loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Bonner: Well, it has caused a loss of money a few times, sometimes to my company, and sometimes

to the shipper.

Mr. Henderson: Can you give any specific instances of that kind, or recall the circumstances. 28

Mr. Bonner: Well, I can call to mind one or two instances that occurred when I was located on the

Louisville & Nashville road.

One instance I remember, we had a car of iron beds shipped from Indianapolis. They were instructed to be routed so as to come into Nashville via the Louisville & Nashville Railroad by way of Louisville. The routing was overlooked or disregarded in some way by the shipper and it came by way of Cincinnati and came into Nashville over the Tennessee Central, and we had to pay very heavy switching charges on that, delivering it from

the Tennessee Central Lines to our plant in East Nashville. As I remember, it was something around \$30. It was a very heavy car of iron beds. I tried to get from the old company this data, but they said they had sent it up to the shipper at Indianapolis and they could not give me the exact data.

One or two instances when we had lumber shipped from points in Mississippi instead of coming in over the Louisville & Nashville Railroad it came in over the Tennessee Central Road and we had to pay switching charges considerably above \$3, the ordinary switch-

ing.

29 I have a case now at my present location on the Tennessee Central. I do not know just what the outcome will be. I had a car of lumber shipped from Fayette, Alabama; that is a local point on the southern road, and instead of coming in over the Tennessee Central it came in over the Louisville & Nashville and I had considerable talk over the phone as to whether I wanted it delivered or not. Of course, I wanted it delivered; I have not got the charges yet; the car was just delivered a day or two ago, and I do not know what the charges will be on it.

The instances have been fewer because I have always been very watchful in regard to routing these cars, but occasionally a man in a hurry, in the press of business, he will overlook that, or the shipper will overlook that, and it comes in on the Louisville & Nashville road and then somebody has got to suffer the consequences.

I do not recall to mind right now any other instances, but if I had been over to the old place where I was some ten or eleven years, I think I could have gotten hold of several cases. I just happened to remember these few.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Bonner, how many cars a 30 year did you average while you were on the Louisville & Nashville tracks, say from ten to eleven years?

Mr. Bonner: Well, sir, I could not tell you how many. I do not remember; not a great many, sir, because we

were always very watchful in having-

Mr. Jouett: I do not mean how many misroutings, but I mean how many cars did you handle in and out when you were on the Louisville & Nashville, for a year? Just a rough estimate?

Mr. Bonner: Well, I could not say. I should say

we handled out—I would say an average of at least 15 cars a month. The in cars were not so much, because our raw material came mostly from local points on the Tennessee Central; that is, our lumber. When I was connected with that concern we had mills on the Tennessee Central.

Mr. Jouett: What would be your estimate on the in-

bound shipments per month?

Mr. Bonner: Oh, I should say they would average

five or six cars, sir.

Mr. Jouett: That would be—15 cars outbound, that would be 20 cars per month, or 240 cars a year, and 31 you were on the Louisville & Nashville for ten or 11 years?

Mr. Bonner: Yes, sir.

Mr. Jouett: Ten or eleven years, that would be 2,400 cars. Now, have you any recollection at all of any misroutings except the two instances you mentioned out

of those 2,400 cars?

Mr. Bonner: I could not call to mind any now, sir, because it was—after I left the old company, I have been away from there two years, and these things are not impressed upon my mind. I know there are others but I can not call them to mind, and I can not say how many others.

Mr. Jouett: It was so very rare, was it not, as to be

almost infinitesimal?

Mr. Bonner: Well, they were rare, because, as I say,

of our watchfulness.

Mr. Jouett: Well, now, is it not a fact that by attending to your business properly, which means that you would direct that the shipments be made over the Louisville & Nashville from competitive points, it becomes a case merely of oversight or inadvertence on the part of somebody that a misrouting occurs? Is that right?

Mr. Bonner: Well, of course, sir, that goes without saying. If a car was routed so as to get in over the

Louisville & Nashville road, if it was located so 32 it could be shipped there would be no extra

charges to pay.

Mr. Jouett: Yes. Now, with reference to these few instances, if I understand you, you have directed them to be routed over the Louisville & Nashville, but somebody somewhere along the line diverted them to the Tennessee Central, is that right?

Mr. Bonner: That was the case as to the car of iron beds from Indianapolis, especially as to the one car of lumber that was shipped from Lyman, Mississippi, it was an oversight on my part in ordering it hurriedly, telegraphing, rather, for it; I overlooked the routing and it came in the other way and it cost me some \$15 to \$16; I don't remember.

Mr. Jouett: But you did not blame us for that, did

vou?

Mr. Bonner: I did not blame the railroad people other than it seems to me a business man ought not to have to be so careful and so watchful about those kind of

things in order to avoid a loss.

Mr. Jouett: Well, if it is a matter of vital interest to the railroads, do you not think it is entirely reasonable to ask the shipper to be reasonably sure about his own business? All he has to do is to say "route via

Louisville & Nashville," is it not?

Mr. Bonner: Yes; I think that is reasonable; at the same time, it is not reasonable for a railroad company or any other proposition to charge unreasonable prices for service.

Mr. Jouett: Now, I want to come to that. Do you know of your own knowledge that that switching charge

of three dollars is unreasonable?

Mr. Bonner: What is that?

Mr. Jouett: Do you know, or do you think that the

charge of \$3 is unreasonable?

Mr. Bonner: Well, sir, I have not gone into that. In some cases it does look unreasonable from the standpoint of a man that has to pay it. It does not look unreasonable from the standpoint of the man that is getting

the money and doing the switching.

Mr. Jouett: If, in point of fact, in order to make a switching movement, there are involved an average of about six separate and distinct moves, not counting the large number of shuntings, and that the carrying in of the cars, the empty car and the taking out of the load, or vice versa, involves carrying that car on an average of 8 or 10 miles, would you not think that \$3 a car was a very low figure for it?

34 Mr. Bonner: Well, sir, I am not up on what

would be reasonable for a railroad standpoint.

Mr. Jouett: You do not know that?

Mr. Bonner: No, sir.

Mr. Jouett: I do not understand that transaction that you referred to, where you had to pay \$30. Will

you please explain that, Mr. Bonner?

Mr. Bonner: Well, we ordered a car of iron beds from an iron bed factory from Indianapolis, Indiana, that should have come, as I remember it now, over the Pennsylvania Railroad to Louisville and over the Louisville & Nashville into Nashville; it would have been delivered to our warehouse then, with no charges other than the regular freight charges on it.

Mr. Jouett: Yes, sir.

Mr. Bonner: For some cause or another the car was shipped by way of Cincinnati, I think over the Big Four—I would not be positive about that—but any way, it came in on the Southern, or the Queen & Crescent, and came down to the Tennessee Central and came into Nashville over the Tennessee Central. The Louisville & Nashville would not move that car, would not place that car in our warehouse on their tracks, without a charge, as

I remember it, of 9 cents per hundred—I won't
be positive about that. I tried to get that
this morning. The minimum on the car was 30,000
pounds, but my impression is that it weighed over the
minimum, and it was something around \$30 that we had
to pay switching charges to deliver it to our warehouse
on the Louisville & Nashville terminal.

Mr. Jouett: Did you not get back that \$30 from the

line that diverted your shipment?

Mr. Bonner: I did not get it back from the lines. When I paid the invoice for the beds I simply deducted that and attached the switching bill and let the other folks fight it out.

Mr. Jouett: Don't you know that they got it back?

Mr. Bonner: What is that?

Mr. Jouett: Don't you know that the consignor got it out of the railroad that made that mistake in the routing?

Mr. Bonner: No, sir.

Mr. Jouett: You don't know whether they did or

Mr. Bonner: No, sir; I don't know that; all I know—Mr. Jouett: But so far as you are concerned, it did not cost you a cent.

Mr. Bonner: It did not cost me anything.

36 Mr. Jouett: You simply deducted that from the bill and let the consignor settle it with the railroad that had made the mistake?

Mr. Bonner: Yes, sir.

Mr. Jouett: And don't you know that the Louisville & Nashville's position was that they did not and could not, under the tariff, switch competitive business, but as that shipment had come here it was a matter that you could settle with the road that made the mistake, that they would handle it at the local rate, and they simply

charged you the local rate, as they would any shipper, from the Tennessee Central point of interchange and the point of interchange to your industry on the Louisville & Nashville tracks.

Mr. Bonner: I know that they charged that, and said that was what we would have to pay, and we paid it.

Mr. Jouett: Don't you understand that was the way

it was worked out, as a fact?

Mr. Bonner: I understand it was worked out, because it was competitive business and it could have been brought in over the Louisville & Nashville, but was not. They did what they were allowed to do by the law and charged this switching.

Mr. Jouett: That is all, Mr. Bonner.

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RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Bonner, this particular car that you have reference to, do you know whether or not the bill of lading actually carried Louisville & Nashville routing?

Mr. Bonner: No; I would not say about that; I do

not recall that now.

Mr. Henderson: Then, you do not know whether it was an error on the part of the railroad company or an error on the pert of the shipper!

Mr. Bonner: No, sir; I do not know; I could not say.

Mr. Henderson: That is all.

Mr. Jouett: It was your impression, and did you not state on direct examination, that you thought it was routed Louisville & Nashville and had been diverted by one of the other lines.

Mr. Bonner: I do not remember that I stated that, because I do not have it in mind. I do not know whose error it was.

Mr. Jouett: That may be my mistake.

Mr. Bonner: I know that my instructions were explicit to the shipper I referred to a copy of the letter; I remember that well.

(Witness excused.)

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W. M. Armistead was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Armistead, what is your residence and occupation?

Mr. Armistead: Real estate business.

Mr. Henderson: In Nashville?

Mr. Armistead: Yes, sir.

Mr. Henderson: Are you interested in any real esstate located on any of the terminals in Nashville in a financial way?

Mr. Armistead: No, sir.

Mr. Henderson: Have you at any time been in the

employ of railroads serving Nashville?

Mr. Armistead: Yes, sir; I have been in the service of the Louisville & Nashville and the Tennessee Central and the Illinois Central and Southern while they operated the Nashville Terminal Company.

Mr. Henderson: When was that Nashville Terminal Company operated by the Illinois Central and Southern,

do you remember?

Mr. Armistead: 1905 to 1908.

39 Mr. Henderson: It was operated as a joint terminal for the two lines?

Mr. Armistead: Yes, sir; that is, when they were

operating the Tennessee Central.

Mr. Henderson: What position did you hold with the joint terminal company of the Illinois Central and Southern during that time?

Mr. Armistead: Terminal Trainmaster.

Mr. Henderson: What position did you hold with the Tennessee Central Railroad?

Mr. Armistead: Freight Agent.

Mr. Henderson: How long were you Freight Agent?
Mr. Armistead: Three or four years—or about five years, altogether, different periods.

Mr. Henderson: All of that time you were at Nash-

ville?

Mr. Armistead: Yes, sir.

Mr. Henderson: Were you familiar with the switching rates and rules in effect during that time?

Mr. Armistead: Yes, sir.

Mr. Henderson: Do you know whether the same rules are still in effect, or practically the same rules?

Mr. Armistead: Well, I judge they are; I have not had occasion to refer to them for three or four years.

Mr. Henderson: During the time you were connected with the Southern and Illinois Central, when they were operating the Tennessee Central, and during your connection with the Tennessee Central, did it ever to your knowledge happen that a car originating at a competitive point would reach Nashville via the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railroad consigned to points on the terminals of

the Southern, Illinois Central or the Tennessee Central?
Mr. Armistead: Yes, sir.

Mr. Henderson: How were these cases handled, and

how were the charges usually adjusted?

Mr. Armistead: Well, if they had reached Nashville via the Louisville & Nashville or the Nashville, Chattanooga & St. Louis the agent of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis would pay our charge on the car. If the car was routed by our line—

Mr. Henderson: That is, bill of lading?

Mr. Armistead: Yes; bill of lading; in other words, if it was a diverted car, if there was no routing, they would not pay it; we would have to pay it or haul it.

41 Mr. Henderson: Then, when the railroads made the error in routing the railroads stood the excess charges?

Mr. Armistead: Yes, sir.

Mr. Henderson: Where there was no routing shown the consignee would have to dray it or switch it, where it originated at competitive points, and pay the charges?

Mr. Armistead: Yes, sir.

Mr. Henderson: Are you generally familiar with the locations of the various industries located on the Tennessee Central?

Mr. Armistead: Yes, sir; all of them.

Mr. Henderson: Mr. Commissioner, if you will allow me, I will file this map as Exhibit No. 1.

Commissioner Meyer: Official map of Nashville? Mr. Henderson: It is a map of the Nashville Terminals, printed by the Tennessee Central Railroad. I will

make that my Exhibit No. 1.

(The map in question so offered and identified was received in evidence and thereupon marked Complainants' Exhibit No. 1, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

Mr. Henderson: I understood you to say you were familiar generally with the industries located

on the Tennessee Central? Mr. Armistead: Yes, sir.

Mr. Henderson: Now, are you in a general way familiar with the location of the industries on the Louisville & Nashville and Nashville, Chattanooga & St. Louis terminals, in Nashville?

Mr. Armistead: Yes, sir, a great majority of them.
Mr. Henderson: During the time you were connected
with the Louisville & Nashville Railroad where was the
traffic interchanged between the Louisville & Nashville

and the Nashville, Chattanooga & St. Louis on the one hand, and the Tennessee Central on the other?

Mr. Armistead: Well, at Baxter Heights and Vine

Hill.

Mr. Henderson: Now, there is direct physical connection between the roads and both of those points?

Mr. Armistead: Yes, sir, with the Louisville & Nash. ville at Vine Hill and the Nashville, Chattanooga & St. Louis and Louisville & Nashville Terminals at Baxter Heights, both roads.

Mr. Henderson: Then, the connections actually exist and transfers have been actually made and are being ac-

tually made.

43 Mr. Armistead: Yes; at Baxter Heights.

Mr. Henderson: What would you say was the approximate switching distance in miles on the bulk of the business received at the point of connection with the Louisville & Nashville, and Nashville, Chattanooga & St. Louis and switched to the various firms on the Tennessee Central Railroad?

Mr. Armistead: Well, if it comes through Baxter Heights it would be three or four miles; that is, for industries in North Nashville, it would be an average of three or four miles. But if they were interchanged at that point and they were brought around to the Front Street industries it would be about 9 miles.

Mr. Henderson: Now, if that business for the Front Street industries were interchanged at Vine Hill, what

would be the average distance there?

Mr. Armistead: It would be four miles.

Mr. Jouett: How much? Mr. Armistead: Four miles.

Mr. Henderson: During your connection with the Illinois Central and Southern, with the joint terminals, did you have anything to do with the keeping of the record of the cost of the terminal service in Nash

ville?

Mr. Armistead: Yes, sir; I kept a record; I 44 made up a monthly report of the average cost of handling cars on the terminal.

Mr. Henderson: That included the total cost of

operation of the Nashville Terminal Company?

Mr. Armistead: No; that was figured on the basis of the vard expenses of the switch engine expense, you might sav.

Mr. Henderson: But did your records show the approximate or average cost of the switching movement in

the terminals?

Mr. Armistead: That is what it covered; that is what it is supposed to cover.

Commissioner Meyer: You did not include any over-

head?

Mr. Armistead: No; we included every car we handled.

Commissioner Meyer: Just the direct switching car? You did not figure any interest on investment, or any-

thing like that?

Mr. Armistead: No; nothing of that kind. We just figured on the basis of the yard expense, yard payroll, engineers, and firemen, and switchmen, crossing watchmen, and the yard detectives, or watchmen, as we call them, and telegraph operators on the terminal.

Commissioner Meyer: Have you a statement

45 that was made up at the time?

Mr. Armistead: No, sir. Of course they are a part of the record of the yard office now; we made out that monthly report.

Commissioner Meyer: And the blanks used would

show exactly which items were included?

Mr. Armistead: Yes, sir; a printed form.

Commissioner Meyer: And which were excluded?

Mr. Armistead: Yes, a printed form we filled out. Mr. Jouett: Mr. Henderson, I did not catch that; did he state what it was?

Mr. Henderson: No; he did not.

Do you recall, Mr. Armistead, what the average cost per car was during that time?

Mr. Armistead: My best recollection is that it was

about 31 cents.

Mr. Jouett: How much? Mr. Armistead: 31 cents.

Commissioner Meyer: Do you remember for what period of time?

Mr. Armistead: That was just for some month; I do not remember just the month, but I remember that was one of the average costs—31 cents.

Commissioner Meyer: You do not remember it

for some other months?

Mr. Armistead: Why, I think sometimes it would go down to 26 cents.

Commissioner Meyer: How high would it go?

Mr. Armistead: Well, 37 cents is the highest I re-

Commissioner Meyer: Did you make an average for an entire year?

Mr. Armistead: Yes, sir; but I do not recall what

that average was at the end of the year. I would have to make that average for the entire year, but my recollection is it averaged about 31 cents for the entire year.

Commissioner Meyer: Do you intend to introduce

such evidence?

Mr. Jouett: Yes, sir; we intend to introduce figures

on that cost.

Mr. Henderson: Did your figures include any items which might properly have been charged to main line, such as telegraph operators, handling of through business through the yards, handling of passenger business

in and out of the depot?

49 Mr. Armistead: Well, different roads have different systems of arriving at that cost. We just included everything.

Mr. Henderson: Your average at that time in-

cluded all of that?

Mr. Armistead: Yes; we handled all the passenger trains; it included all the passenger trains, and all such as that; all the work the yards performed.

Commissioner Meyer: Did you keep a separate cost

of handling passenger cars in the yards?

Mr. Armistead: No, sir; that was included in that 31 cents.

Mr. Henderson: That is all I have, Mr. Commissioner.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Armistead, you were working for which roads?

Mr. Armistead: Louisville & Nashville, Tennessee Central and Illinois Central and Southern while they

were operating the Nashville Terminal Company.

Mr. Jouett: Now, you stated that you were familiar with the rules of switching. The substance of that is this, is it not; that taking the Louisville & Nashville, for instance, in the case of an industry located upon a Louis-

ville & Nashville track, if that industry wished to
make a shipment out, or wished to receive a
shipment in, if it was going to or coming from a
point that the Louisville & Nashville rails did not
reach, or did not reach with its connections, it would
switch that business between the industry on its track
and the point of interchange with the Tennessee Central

Mr. Armistead: Yes, sir.

at a charge of \$3 per car?

Mr. Jouett: That was the rule, was it not?

Mr. Armistead: Yes, sir.

Mr. Jouett: And they only declined to switch what we call competitive business; that is, business that they could take from or to the industry upon their tracks to or from the destination or point of origin at the same price that its competitor did.

Mr. Armistead: Well, you might—I can answer that better by going back a little. No, it would not handle that business except on a competitive rate. If they could

handle the business-

Mr. Jouett: Is it not a fact that they would only consider it competitive if it—that is, the Louisville & Nashville, was able to handle it to or from that point at the same or a less charge than the Tennessee Cen-

Mr. Armistead: Yes, sir.

Mr. Jouett: So, even if there was business to or from a competitive point but because of the circuitous route, or for some other reason, the Louisville & Nashville's rate was higher than the Tennessee Central it would handle that business as non-competitive and switch it for the industries on its track.

Mr. Armistead: I do not recall any case of that kind. Mr. Jouett: Well, you know that is in the tariff, do

you not?

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Mr. Armistead: Yes, sir: I think it is.

Mr. Jouett: You have never heard of any violation of that rule, have you?

Mr. Armistead: No, sir.

Mr. Jouett: Well, coming to the distance, this switching occurs; you say it would be three or four miles on an average in switching, I believe you said, to North Nashville, or some point you named?

Mr. Armistead: From Baxter Heights to North

Nashville industries.

Mr. Jouett: You mean it is that far from them?
Mr. Armistead: That is about the average distance.

is the method: That if an industry on the Louisville & Nashville tracks wished to ship a car to some point on the Tennessee Central, that it would do the switching, the Louisville & Nashville would do the switching at \$3; the Louisville & Nashville would have an empty car from the Tennessee Central at the point of interchange, move that empty to the industry on the Louisville & Nashville tracks and then after the car was loaded move the loaded car from the Louisville & Nashville industry back to the point of interchange, so that

would be twice the distance you named?

Mr. Jouett: Is not that the process?

Mr. Armistead: No, sir.

Mr. Jouett: In what respect is that statement erroneous?

Mr. Armistead: In the fact that we delivered the Louisville & Nashville and the Nashville, Chattanooga & St. Louis more cars than they delivered to us, therefore, we always had a surplus of cars, and whenever they had an order for a car going out over the Tennessee Central they had them already in their yard and all they had to do was to place it; they never had to call on us for a car, very seldom.

Mr. Jouett: Did not that car have to be brought

53 over sometime?

Mr. Armistead: From where?

Mr. Jouett: From the Tennessee Central to the Louisville & Nashville tracks?

Mr. Armistead: Certainly; after the car was loaded, yes.

Mr. Jouett: I mean, did not the Tennessee Central have to bring it to their Louisville & Nashville yard?

Mr. Armistead: No, no.

Mr. Jouett: Then, did not the Louisville & Nashville at the same time have to take that empty car from the point of interchange with the Tennessee Central, get it from the point of interchange and take it to the Louisville & Nashville industry?

Mr. Armistead: No, sir; they carried it under load.

Mr. Jouett: How is that.

Mr. Armistead: The car was originally received at the point of interchange and carried to the industry under load.

Mr. Jouett: I had it reversed the other way; it comes both ways; they switch going in and out, do they not?

Mr. Armistead: Certainly.

Mr. Jouett: Suppose we wanted to switch out a load, a Louisville & Nashville industry wants to ship a carload of furniture to a point on the Tennessee Central Line, what would be the process?

Mr. Armistead: They would call on their general yardmaster for an empty and he already had a lot of our empties in the yard and filled it with an empty he already had.

Mr. Jouett: You mean he would use a Louisville & Nashville empty?

Mr. Armistead: No, sir; Tennessee Central equipment.

Mr. Jouett: Very well; where did he get that Tennessee Central equipment.

Mr. Armistead: Upon the interchange, on the Louis-

ville & Nashville, under load.

Mr. Jouett: Did not the Louisville & Nashville get it?

Mr. Armistead: Yes, sir.

Mr. Jouett: Then, at sometime, whether it was that day or some day before, the Louisville & Nashville, in order to perform this service, had to go to the point of interchange with its engine and had to bring that car into its own yards, and ultimately had to take that car from its yard to the industry and then deliver that car

from the industry back around all the routes to the

55 point of interchange?

Mr. Armistead: That is correct, except in the statement that I understood you to ask if they did not send to the interchange for an empty car to fill that order.

Mr. Jouett: No; not that particular car that day.

Mr. Armistead: Yes.

Mr. Jouett: But I mean at some time?

Mr. Armistead: Yes; they got it under load as a rule.

Mr. Jouett: So in that instance the Louisville & Nashville did have to handle an empty, whether it was handled by itself or with other cars, they did have to handle the empty from the point of interchange to its breaking-up yard, then it formed another cut and goes on to the next distributing yard, and then is formed into another cut and goes on to the industry; then it has to pass out as a loaded car through the same process back to the industry?

Mr. Armistead: Yes, sir.

Mr. Jouett: That is right, is it not?

Mr. Armistead: Why, certainly.

Mr. Jouett: Does not that mean then that the Louisville & Nashville had handled that particular car, perhaps not alone, but had handled that car a distance of seven or eight miles to perform that service?

56 Mr. Armistead: They probably would have to handle it seven or eight miles, but one of the movements of handling that car was the car handled under load?

Mr. Jouett: I understand that.

Mr. Armistead: They very seldom made a requisition on us for an empty car.

Mr. Jouett: I understand that, not a single empty car.

Mr. Armistead: Or a dozen.

Mr. Jouett: I am talking about sooner or later, whether it was a dozen at a time or one at a time, they actually handled the car empty; went to the point of interchange and got that empty, or other empties, and handled it to the industry and from the industry back to the point of interchange in order to perform the switching for the charge of three dollars.

Mr. Armistead: You keep talking about an empty

from the interchange.

Mr. Jouett: I say one car; they might handle 25 at a time; but is not that car being handled?

Mr. Armistead: Of course the car is being handled? Mr. Jouett: That is what I am talking about.

Mr. Armistead: But you say— Mr. Jouett: I am not talking about going 57 there and getting a car; I am talking about the actual movement of that car that was made with the Louisville & Nashville engine; it probably was with a number of cars, but I am asking the service on that car.

Mr. Armistead: We deliver them a great many more cars than they deliver us, but the cars we deliver them

are under load.

Mr. Jouett: But the movement is the same.

Mr. Armistead: Oh, the movement is the same,

whether loaded or empty.

Mr. Jouett: You speak of the cost of service and you state from recollection that you think it figured up an average of 31 cents per car?

Mr. Armistead: Yes, sir.

Mr. Jouett: Now, tell the Commissioner just what you mean by that. What handling of a car do you count as one car at 31 cents?

Mr. Armistead: We just simply arrived at the total number of cars we handled and then figured out what our total yard payroll was, and figured on that basis.

Mr. Jouett: You counted a car coming in as one car. and if the same car went through you counted that

58 as another car, did you not?

Mr. Armistead: We counted our inbound and outbound cars.

Mr. Jouett: Then, if a car came through from Louisville going to Montgomery, you count that car twice going through the terminals?

Mr. Armistead: Yes, sir.

Mr. Jouett: And that counted just a movement in and a movement out?

Mr. Armistead: Yes, sir; we had very few of those

cars, though.

Mr. Jouett: There were other cars went through; not necessarily to Montgomery, but they went through the Nashville terminals.

Mr. Armistead: Very few; we do not handle many to

Montgomery.

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Mr. Jouett: But cars went through Nashville?

Mr. Armistead: Yes, sir; we included them in there. Mr. Jouett: Now, you do not mean to say at all to the Commissioner that the cost of handling a car in the manner that is necessary to perform a switching service between a Louisville & Nashville industry and the point of interchange with the Tennessee Central involving, as

you have stated there, an ultimate movement of seven or eight miles, and involving also all of

the different switch movements, not counting the drilling or shunting that is necessary to accomplish it—that the handling of a car in that way for that distance and those movements could be done at anything like 31 cents.

Mr. Armistead: By no means.

Mr Jouett: It would be your opinion that it would be very much larger, many times 31 cents, would it not?

Mr. Armistead: Well, we figured on that several times and reached a conclusion as to what we would

charge under those conditions.

Mr. Jouett: Mr. Armistead, you were speaking of the handling of a car at 31 cents. Were you speaking of the figures of the Tennessee Central or the Louisville & Nashville?

Mr. Armistead: I am not speaking of the Louisville & Nashville or the Nashville, Chattanooga & St. Louis; I knew nothing about their figures.

Mr. Jouett: I misunderstood you. I thought you

spoke of the Louisville & Nashville?

Mr. Armistead: No.

Mr. Jouett: You know there are very many Louisville & Nashville cars go right straight through Nashville?

Mr. Armistead: Certainly. I was not undertaking to figure on the Louisville & Nashville and Nashville, Chattanooga & St. Louis.

Mr. Jouett: I misunderstood you.

Mr. Armistead: Oh, no.

Mr. Jouett: What was your yard service handling

cars on the Tennessee Central, it was a lighter service, was it not?

Mr. Armistead: Yes, sir—no, I will take that back. We do not work the number of engines that the Nashville Terminals do or handle the volume of business they handle.

Mr. Jouett: You have a small yard down there?

Mr. Armistead: Yes, sir.

Mr. Jouett: So the movement of the cars is shorter than the others ?

Mr. Armistead: Yes, sir.

Mr. Jouett: And you did not in that even take into consideration the rental of the equipment.

Mr. Armistead: No, sir.

Mr. Jouett: The value of use of the equipment?

Mr. Armistead: No, sir.

Mr. Jouett: Or depreciation?

Mr. Armistead: No.

Mr. Jouett: Or the value or use of terminals or interest charges?

Mr. Armistead: No.

Mr. Jouett: Overhead charges?

Mr. Armistead: No, sir, didn't figure that at all.

Mr. Jouett: You simply tried to figure what it would mean for a car movement where you took into consideration merely the cost of the engine men and other incidentals—necessary cost of the actual performing of the service?

Mr. Armistead: Yes, sir; and probably some little unnecessary too, when you take into consideration these watchmen and telegraph operators. That would include all of them in there. It was just the yard payroll we figured on exclusively.

Mr. Jouett: The yard payroll you figured on ex-

clusively?

Mr. Armistead: The General Yardmaster's payroll.
Mr. Jouett: Did you include coal, the expense of running the engines?

Mr. Armistead: No, sir.

Mr. Jouett: Or things of that sort?

Mr. Armistead: No, sir; that was the engine cost. We did not figure that; just the engineer and fireman.

Mr. Jouett: Did not include, or did you include, the superintendent of your terminals and men of that sort?

62 Mr. Armistead: I did not include myself in that payroll.

Mr. Jouett: That is all.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Armistead, this hauling of cars by a switching movement where the Louisville & Nashville would get an empty car from the Tennessee Central, place it and load it and then switch it back, that is not peculiar to Nashville, is it? Is not that the general method of doing switching and interchange business

everywhere?

Mr. Jouett: We object, Mr. Commissioner, to any testimony as to the rules or practices or cost in other cities. It would mean the injection into this case of just as many other collateral trials as they should introduce cities. They will want to go into 25 places and we might want to go into 25 or 50 places to meet them. But we are not trying collateral issues as to the cost of service and the propriety of the charges in all these other cities, as to which we are not prepared to offer evidence. I think it is immaterial to go into the practices or the costs of switching in other cities. I am free to admit that in some cities it is less than three dollars; in most cities it is more than three dollars. We would not be hurt by the evidence, but we would be here for weeks

trying a lot of collateral issues that would not bear any proper relation to the issues in the

case

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Mr. Henderson: The question had nothing to do with

the cost here or anywhere else.

Mr. Jouett: But you were asking a preliminary question and I thought it proper to object at the outset. You were asking if these rules did not apply in other cities, manifestly preliminary to some question as to what were

the charges or practices in other cities.

Mr. Commissioner: You will recall, I think, in a recent case that was decided by the Commission—I am not sure whether it was the Bellefontaine case or New Castle case, that very question was asked and the Commission said the switching practices in Cleveland and other cities could not be considered in connection with this other case. I think it was the New Castle case. Your Honor will probably recall the case. It was decided by the Commission within two months.

Commissioner Meyer: Whether it was that or the Pittsburgh case, that was particularly discussed in the

Pittsburgh case.

Mr. Jouett: Maybe it was the Pittsburgh case,
I think it is a collateral inquiry that ought not
to be gone into.

Commissioner Meyer: Let us see what Mr. Hender-

son has to say.

Mr. Henderson: My question has nothing to do with the cost of service at Nashville or anywhere else. The question was brought out about the double movement of the cars and switching twice instead of once, and I asked Mr. Armistead whether that condition was peculiar to Nashville or if it was not true everywhere where cars are interchanged.

Mr. Jouett: We will concede that, but we say it is

irrelevant?

Mr. Henderson: That is all right, you can say that. Do you know whether that is true or not, Mr. Armistead? Commissioner Meyer: It is conceded, Mr. Henderson.

Mr. Henderson: That is all I have.

Commissioner Meyer: In your judgment does it cost more here in Nashville to place a car at one of the industries or to move a car destined, say, to Chicago, from Birmingham through the terminal in Nashville? Which costs more, to pull a car through or to place it at an industry, considering the average placement?

Mr. Armistead: It costs more to put it at an in-

dustry.

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Commissioner Meyer: That is all.

(Witness excused.)

Mr. Henderson: Mr. Farris, will you take the stand please.

W. F. Farris, Jr., was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Farris, what is your residence and occupation, please?

Mr. Farris: My residence is in Nashville; I am in

the lumber business.

Mr. Henderson: What is the name of your firm? Mr. Farris: Farris Hardwood Lumber Company.

Mr. Henderson: Do you operate a mill?

Mr. Farris: Yes, sir.

Mr. Henderson: On what terminal tracks is your mill located in Nashville?

Mr. Farris: Located on the Louisville & Nashville Terminals.

Mr. Henderson: Do you buy any logs from local points on the Tennessee Central Railroad?

Mr. Farris: Yes, sir; some.

Mr. Henderson: When those logs reach Nashville via the Tennessee Central what switching rate do you pay to get them over to your mill?

Mr. Farris: We pay three dollars a car from non-

competitive points.

Mr. Henderson: Has the Tennessee Central, or do you know whether the Tennessee Central has milling in transit arrangements upon those logs?

Mr. Farris: Yes, sir; they have a milling in transit

arrangement.

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Mr. Henderson: They refund down to a certain point when the lumber is reshipped by their line?

Mr. Farris: Yes, sir.

Mr. Henderson: And in order to take advantage of that milling in transit and reship by the Tennessee Central Railroad lumber which is sawed out of the logs drawn from their road, if that lumber is going to a competitive point how do you have to get it back to the Tennessee Central?

Mr. Farris: Well, we have to haul it across town and put it on the Tennessee Central's side tracks; load it on the Tennessee Central car on the siding.

Mr. Henderson: And what is the average cost to you

of hauling a car of lumber across town?

Mr. Farris: Well, I should judge about \$7.50

per car extra labor.

Mr. Henderson: You can not load that car at your yard and have it switched back to the Tennessee Central at \$3 unless it is going to a non-competitive point?

Mr. Farris: No, sir.

Mr. Henderson: In order to get that refund and your milling in transit you have to haul your lumber across town?

Mr. Farris: Yes, sir.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Farris, I did not quite understand that milling in transit arrangement; explain that, will

you, a little more fully how it applies here.

Mr. Farris: Well, if we buy logs on the Tennessee Central track, they charge us a gross rate, and when they ship out the lumber that comes out of these logs, if we ship this lumber over the Tennessee Central Railroad we will get a reshipping on that—we will get a rate of, say, 40 or 50 per cent of what we would have paid. In order for us to get this reshipping, of course this

68 lumber has got to go out on the Tennessee Central

track and we have got to haul the lumber to a Tennessee Central side track in order to get the reship-

ping on it.

Mr. Jouett: Well, the complaint you make there is that the Louisville & Nashville will not carry your product from your industry on the Louisville & Nashville over to the Tennessee Central for you at all.

Mr. Farris: Well, they will carry it.

Mr. Jouett: Isn't it?

Mr. Farris. Well, they will carry it at a rate that prohibits us from—

Mr. Jouett: I mean, except at a local rate. They do

not switch it, I mean.

Mr. Farris: They will carry it at a rate all right. Mr. Jouett: Now, get that a little clearer. If I understand it, your industry is on the Louisville & Nashville?

Mr. Farris: Yes, sir.

Mr. Jouett: If you buy lumber from a local station on the Tennessee Central, the Louisville & Nashville will cheerfully switch it over from the Tennessee Central point of interchange on your industry on the Louisville

& Nashville tracks at the regular charge of three

dollars. That is right, is it not?

Mr. Farris: Yes, sir.

Mr. Jouett: And what you complain of is when you go to ship it out, ship it to a competitive point to which the Louisville & Nashville could carry it itself, that the Louisville & Nashville will not carry it through those terminals and deliver it back to the Tennessee Central so the Tennessee Central can get that line-haul revenue?

Mr. Farris: Well, they will carry it back at the rate.
Mr. Jouett: I mean they will not do it at the switching charge?

Mr. Farris: Sir.

Mr. Jouett: I mean they will not do it at the switching charge.

Mr. Farris, No.

Mr. Jouett: If they carry it at all, do they carry it in any other wise than as a local shipment, say, for the first ten miles.

Mr. Farris: Well, I don't—the rate there is about three cents and we can haul it cheaper than that.

Mr. Jouett: Well, you have shipped it that way, have

you?

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Mr. Farris: We have never shipped it, no, sir; we have always hauled it.

Mr. Jouett: Well, who was it told you that the rate would be three cents a hundred?

Mr. Farris: Why, the Louisville & Nashville Railroad

office.

Mr. Jouett: Do you know when it was and who it was?
Mr. Farris: Yes; I called up the Louisville & Nashville office this morning and asked them about a car.

Mr. Jouett: That you wanted shipped over the Ten-

nessee Central to go out to a competitive point?

Mr. Farris: Yes, sir.

Mr. Jouett: And they said they would not switch it on the switching charge of three dollars?

Mr. Farris: Yes, sir.

Mr. Jouett: What else did they say?

Mr. Farris: I told them I wanted to ship a car to Chicago over the Tennessee Central and asked them what the switching charge would be for me to turn the car to the Tennessee Central Railroad, and they said three cents per hundred pounds.

Mr. Jovett: Do you know if that is their local rate

for the first station out of Nashville?

Mr. Farris: I don't know whether it is a local

rate or not.

Mr. Jouett: How far would it be from your industry on the Lousville & Nashville to the point of interchange with the Tennessee Central?

Mr. Farris: How far we have to haul our lumber to

put this or-

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Mr. Jorett: Yes—no; how far would the Louisville & Nashville have to haul it around by the tracks where it is loaded in order to delivery it to the point of interchange.

Mr. Farris: Well, about a mile and a quarter, I

should judge.

Mr. Joiett: How is that?

Mr. Fairis: About a mile and a quarter.

Mr. Joiett: Where is your industry located?

Mr. Farris: It is on the Cumberland River, just south of the Jefferson State bridge, on the corner of Old Holmes Street and the river.

Mr. Jorett: Do you know where the freight business would be 'rom your industry to what point, to what breaking-up point or to what making-up yard?

Mr. Farris: You mean where it would be taken

72 over to the Tennessee Central?

Mr. Jouett: No; where would the Louisville & Nashville lave to take it to get it to the Tennessee Central? What move would it make then from your industry? Mr. Farris: Have to take it to the East Nashville yards.

Mr. Jouett: How far is that from your industry?

Mr. Farris: About three hundred yards.

Mr. Jouett: Now, the train would be broken up and that car would be put in a cut of cars that would be made up to go around to what other point next.

Mr. Farris: The nearest point would be North Nash-

ville.

Mr. Jouett: And how far is that?

Mr. Farris: Just across the Cumberland River; I guess it is a quarter of a mile.

Mr. Jouett: Is there a breaking-up yard over there

at that point?

Mr. Farris: What do you mean by a breaking-up

yard?

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Mr. Jouett: I mean the different points that are covered by a switching movement. Don't you know that they never take a car from one industry to another, and necessarily have to handle it in a train or cut of cars; do

you know that? If you do not know I won't ask

you any further about it?

Mr. Farris: I do not know how they handle it at all.

Mr. Jouett: Then you do not know how the car would be handled?

Mr. Farris: No, sir.

Mr. Jouett: All right; I will prove that by somebody else. That is all.

(Witness excused.)

Mr. Henderson: Mr. Derryberry will you come around, please?

M. E. Derryberry was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Derryberry, what is your occupation and residence?

Mr. Derrberry: Wholesale grocery business.

Mr. Henderson: How long have you been in the grocery business at Nashville?

Mr. Derryberry: Altogether about 26 years. I have been on the Tennessee Central tracks about 7 years.

Mr. Henderson: Is that the last 7 years? Are you now on the Tennessee Central tracks?

74 Mr. Derrberry: Yes, sir.

Mr. Henderson: Are you familiar with the pres-

ent rules of the Tennessee Central, the Nashville, Chattanooga & St. Louis and the Louisville & Nashville Railroad governing the switching of various articles handled by you?

Mr. Derryberry: Yes, sir; I think I am.

Mr. Henderson: Have these rules ever caused you any loss of business, loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Derryberry: Caused me some loss of money and

a great inconvenience at times.

Mr. Henderson: Will you please say in what respect,

if you have any specific cases?

Mr. Derryberry: Well, frequently a car is diverted and comes in over the Louisville & Nashville or the Nashville, Chattanooga & St. Louis road, and we may have to have it hauled across town instead of getting it at our place of business.

Mr. Henderson: Is that hauling more inconvenient

than unloading at your back door?

Mr. Derryberry: Very much so, yes, sir.

Mr. Henderson: Does it damage the goods in any respect?

Mr. Derryberry: Yes, sir; as a rule more or less

Mr. Henderson: Is it not a fact that there are certain goods in your line that are sold on a delivered price, f. o. b. Nashville?

Mr. Derryberry: Yes, sir; most of it.

Mr. Henderson: Do those concerns selling those goods guarantee, as a general thing, any specific delivery at Nashville, or just delivered at Nashville?

Mr. Derryberry: As a rule, they are bought f. o. b.

Nashville.

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Mr. Henderson: And when they are not specifically routed and do not reach Nashville via the Tennessee Central you have to stand the drayage or transfer?

Mr. Derryberry: We try to instruct them about the routing, on every car, but occasionally they overlook it, and in that instance, why, we would have to pay the drayage ourselves. If the shipper makes a mistake we throw it back on him. That is all I know.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Derryberry, what is your business?
Mr. Derryberry: Wholesale grocery.

76 Mr. Jouett: Your store is located where? Mr. Derryberry: On the Tennessee Central tracks. Mr. Jouett: What street?

Mr. Derryberry: Down in the central part of the city.

Mr. Jouett: On what street?

Mr. Derryberry: On Second Avenue.

Mr. Jouett: And the Tennessee Central passes back of your store, does it?

Mr. Derryberry: On Front Street-First Avenue,

yes, sir:

Mr. Jouett: How is that?

Mr. Derryberry: On First Avenue; it is right in the rear of the building.

Mr. Jouett: Then, you are located what might be said to be exclusively on the Tennessee Central?

Mr. Derryberry: Yes, sir.

Mr. Jouett: You are thoroughly familiar with the

switching rules here in Nashville, are you not?

Mr. Derryberry: I do not say I am thoroughly familiar with them. I am so far as our business is concerned. Mr. Jouett: So far as your business is concerned?

Mr. Derryberry: Yes, sir.

Mr. Jouett: You know it is the rule of the companies not to switch for each other competitive business; that is, not to switch to the other company and give it the line haul when that company itself could handle the line haul to the point of destination or origin?

Mr. Derryberry: Yes, sir.

Mr. Jouett: Then, all you have to do is direct the consignor to ship for Tennessee Central delivery, is it not?

Mr. Derryberry: Well, occasionally they sell these goods delivered, and they have a right to make their own routing. For some reason they may think the Tennessee Central would not be responsible in case they had a claim.

Mr. Jouett: Well, as a rule you direct the routing,

you have a right to direct the routing?

Mr. Derryberry: As a rule, they respect our request. Mr. Jouett: Now, if you bought from somebody who said he would prefer to route over the Tennessee Central when there was a routing over the Louisville & Nashville, I mean when you buy from somebody who preferred to route over the Louisville & Nashville when there was a line coming over the Tennessee Central that would make delivery at your store, have you ever had any trouble in having them, on request from you, route via the Tennessee Central?

78 Mr. Derryberry: Well, there has been occasionally a firm which refused to route that way; not recently, though.

Mr. Jouett: As a business man would you buy from

a firm that refused?

Mr. Derryberry: No, I would not; but sometimes we make a purchase and they have made the sale delivered and they have refused to recognize our routing.

Mr. Jouett: How many instances of that kind have

you, Mr. Derryberry?

Mr. Derryberry: Well, they are rare, I will admit they are rare.

Mr. Jouett: One in a thousand?

Mr. Derryberry: No; I would not say, I do not know.
Mr. Jouett: Now, Mr. Derryberry, if I understand
it, in case a car comes in over the Louisville & Nashville
when it should have come in over the Tennessee Central
that mistake has occurred in one of three ways; either
you neglected to direct it to be routed over the Tennessee
Central or the consignor neglected to carry out your
instructions to route for Tennessee Central delivery, or
the carrier some where in the line, diverted the shipment?

Mr. Derryberry: Yes, sir.

79 Mr. Jouett: In case the consignor made the mistake and disobeyed your instructions and routed over the Louisville & Nashville when he should have routed over the Tennessee Central, or failed to route over the Tennessee Central, you say you always have him stand that loss?

Mr. Derryberry: Yes, sir. Mr. Jouett: And he does it? Mr. Derryberry: Yes, sir.

Mr. Jouett: Does it cheerfully? Mr. Derryberry: He has to do it. Mr. Jouett: He has to do it? Mr. Derryberry: Yes, sir.

Mr. Jouett: Now, in case the railroad company diverts it, you know, under the laws and regulations of the Interstate Commerce Commission, that the railroad must make you whole in the matter and must pay the cost

of the drayage, or whatever else is necessary.

Mr. Derryberry: The first three or four instances they asked us to file a claim for the loss, but we were unable to place any responsibility on any of the lines over which the goods moved, and after I had had a little experience I refused to accept it and let them do their own drayage.

Mr. Jouett: And they drayed it for you?

Mr. Derryberry: Yes, sir; they had to do that too. Mr. Jouett: Yes, sir; they had to do it and it was not any cost to you?

Mr. Derryberry: No, sir.

Mr. Jouett: Then, the only case where you suffered any financial loss for the cost of this draying would be where you had neglected to properly attend to it yourself, would it not?

Mr. Derryberry: Yes, sir. Mr. Jouett: That is all.

Mr. Derryberry: I will answer that, though, except occasionally, where a shipper would reserve the right to do his own routing, because of the fact they sold the goods delivered.

Mr. Jouett: But you say that is very rare? Mr. Derryberry: That is rare, yes, sir.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Derryberry, just one question, please. If you were to get an order from a customer of yours and it was discovered that he made an error in just what he wanted, do you think that would justify you

in charging him ten times as much for what he

81 really wanted than otherwise?

Mr. Derryberry: I did not catch the question.

Mr. Henderson: If one of your customers were to give you an order for a lot of groceries and he should, by oversight, or by any other error, make a mistake in the order, would that justify you in charging him five or six times as much for what he really wanted than you would otherwise?

Mr. Derryberry: Most certainly it would not.

RE-CROSS EXAMINATION.

Mr. Jouett: Is it not a fact in this case that you are the customer instead of the other man, and the other

man makes the mistake in shipping to you?

Mr. Derryberry: Well, we all make mistakes. The railroads seem to divert the cars. That is where the trouble is. We seldom make a mistake in instructing them as to routing. They get hold of a lot of cars—we do not understand it—we are compelled to haul those cars across town and although they stand the drayage it means considerable loss of time and trouble to us.

Mr. Jouett: I understand that, but you say, referring to the illustration of Mr. Henderson, in the illustration he makes, it is not a case where you charge the other

man for the loss, because he is your customer; the fact is, you are his customer?

Mr. Derrberry: Yes, sir.

Mr. Jouett: If you were selling something to some customer that would be shipped out of Nashville, and you were looking after it, you would ship over the Tennessee Central.

Mr. Derryberry: Depends on where his place of busi-

ness is.

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Mr. Jouett: I mean, if it was a competitive point?

Mr. Derryberry: Yes, sir.

Mr. Jouett: If it went to a non-competitive point they would switch it for you?

Mr. Derryberry: Yes, sir.

Mr. Jouett: So you would not be hurt a bit?

Mr. Derryberry: No, sir. Mr. Jouett: That is all. Mr. Henderson: That is all.

(Witness excused.)

Mr. Henderson: Mr. Morgan, will you come around, please?

E. S. Morgan was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Morgan, what is your residence and occupation?

Mr. Morgan: Richland Avenue, merchandise broker. Mr. Henderson: How long have you been in the brokerage business in Nashville?

Mr. Morgan: Seven years.

Mr. Henderson: What terminal tracks is your ware-

house in Nashville located on?

Mr. Morgan: For two years we were in Cumberland Station on the Louisville & Nashville and Nashville, Chattanooga & St. Louis, and the balance, five years, on the Tennessee Central.

Mr. Henderson: Your present location is on the Ten-

nessee Central?

Mr. Morgan: Tennessee Central, yes, sir.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central, Nashville, Chattanooga & St. Louis and the Louisville & Nashville governing the switching of merchandise handled by you?

84 Mr. Morgan: Yes, sir.

Mr. Henderson: Have these rules at any time caused you any loss of business, loss of money or other-

wise inconvenienced you in the conduct of your business?

Mr. Morgan: Well, they cost me lots of money and cause me inconvenience and annoyance.

Mr. Henderson: In what respect, please.

Mr. Morgan: Well, I can cite one case. On February

Commissioner Meyer: 1914?

Mr. Morgan: Yes, sir; 1914; I bought a car of canned tomatoes in the name of Dodson-Gentry & Company here, for my own account.

Mr. Jouett: How is that?

Mr. Morgan: I say, in February, 1914, I bought a car of canned tomatoes, shipment from Maryland or Virginia, I believe, for my own account, and routed the shipment for Tennessee Central delivery. That is, those were the instructions to the shipper.

Mr. Jouett: Pardon me, but you said somebody else's

name; I did not catch that.

Mr. Morgan: Dodson-Gentry & Company, one of our jobbers, grocery jobbers. And this fellow shipped the car on open routing; he did not recognize the routing.

Mr. Jouett: Did not follow your directions?

Mr. Morgan: No, sir; did not do it; did not follow our directions. When the car arrived here we refused to take it on the Louisville & Nashville road, where it arrived, and wired him to that effect, and he agreed to pay the drayage, provided we would take the car on in, acknowledging it was his mistake, and we did that and paid the drayage, amounting to \$10.75, across town on this particular car, and we sent this party a bill for the drayage and he has never paid it yet. He may do it and he may not do it.

Now, in selling for a packer of that sort we usually sell through another broker if they are too far from home, because we do not know the people, do not know them personally, do not know anything about them, because sometimes they do not have any rating whatever, and you can not depend upon them, and I make it a rule

to sell only for responsible parties.

This broker through whom I sold would not assume those charges, and he assures me this broker will pay it, but he has not paid it so far. He agreed to pay it on February 9th, the date of his telegram. That is one case where it has cost me money so far.

Then, on January 13th, this year, we shipped Orr, Mizell & Murrey, wholesale grocers of this city, a car of green coffee from Arbuckle Brothers, New York, routed Tennessee Central delivery which gives

them side walk delivery, and he observed the instructions to the letter, and the car arrived via the Nashville, Chattanooga & St. Louis, and he finally had for certain, but by either the Nashville, Chattanooga & St. Louis or the Louisville & Nashville-and the carriers drayed the car free of charge. Their buyer claimed it gave them a good deal of trouble, however, taking the goods in at the front door, as they had arranged to do all their unloading at the back door.

And then, a case where it has cost our shippers by not observing the routing-I sold a car of stock feed not long ago to Moorehead and Young here, who are located on the Tennessee Central tracks. Our shippers mistook the letters T. C. for I. C. on our instructions and shipped the car Illinois Central and it arrived here over the Nashville, Chattanooga & St. Louis-I would not say that to pay the drayage on that car amounting to \$8.75, which of course, was a clear loss to him.

Then another case where I had a car of potatoes shipped by Albert Miller & Company, Chicago, to Dodson-Gentry & Company, and although these people are not located on either the Nashville, Chattanooga & St. Louis

or the Louisville & Nashville or the Tennessee 87 Central, and have to haul their goods, they claim that they can haul them for a great deal less money from the Tennessee Central if they haul them themselves, as long as they are just about, say two hundred yards from where a car should be placed, and they considered it a fair compromise of \$5 on that car, and our shipper paid it.

Then, sometimes we lose business on a car of stuff that is consigned to us for sale. It may be consigned to us for Louisville & Nashville delivery. Nine times out of ten I would route it that way and take chances on selling it on arrival, and give the party back door delivery. Then, possibly I would have a chance to sell a car to some jobber on the Tennessee Central tracks, and in the case of navy beans the drayage would amount to, say, a cent and a half a bushel, and that would switch a trade lots of times on that commodity.

I do not know of any other special instances.

CROSS-EXAMINATION.

Mr. Jouett: How long have you been in business handling carload shipments?

Mr. Morgan: Seven years. Mr. Jouett: Seven years? Mr. Morgan: Yes, sir.

88 Mr. Jouett: How many cars a year do you handle?

Mr. Morgan: Well, I could not tell you.

Mr. Jouett: Just approximately.

Mr. Morgan: I should say between 7 and 8 hundred cars.

Mr. Jouett: Seven or eight hundred cars a year?

Mr. Morgan: That is, sell that many and route that many; of course, I do not handle them in my own name.

Mr. Jouett: And you have been there seven years? Mr. Morgan: Yes, sir.

Mr. Jouett: That would be seven or eight hundred cars a year for seven years?

Mr. Morgan: Yes, sir, I think so.

Mr. Jouett: Now, you have named out of that number of cars five illustrations, and I would like to ask you about them in detail.

Mr. Morgan: They were just on different lines, you know.

Mr. Jouett: Yes; the first was a case where the consignor failed to follow your directions?

Mr. Morgan: Yes, sir.

Mr. Jouett: And you would not take the car and you took it up with him and he admitted that it was his mistake and said he would pay the drayage bill which 89

amounted to \$10.57 if you paid it?

Mr. Morgan: Yes, sir.

Mr. Jouett: Now, if you lost that \$10.57 would you say it was because of this switching policy, or because you made a mistake in taking the credit of that man?

Mr. Morgan: How is that?

Mr. Jouett: If you lost that \$10.57 when you did not have to assume that responsibility would you say that that was properly chargeable as a business proposition to this switching practice at Nashville or is it chargeable to your mistake of judgment in determining the responsibility of this man whom you trusted for \$10.57?

Mr. Morgan: Well, I am responsible for trusting him

if I lose the \$10.57?

Mr. Jouett: Yes, sir.

Mr. Morgan: Absolutely. Mr. Jouett: Now, we will take the second case; that was the case of the coffee that arrived by the way of the Nashville, Chattanooga & St. Louis where the instructions were disobeyed. In that case, if I understand it, the railroad promptly paid the drayage and delivered the coffee to you and all you suffered was some inconvenience in loading it in the front of the house instead of the back?

90 Mr. Morgan: That is it, exactly.

Mr. Jouett: Then, in the third case, that was where they mistook T. C. for I. C., or rather read T. C. to mean I. C., and routed it wrong?

Mr. Morgan: Yes.

Mr. Jouett: So that it came Illinois Central, or around over the Louisville & Nashville or the Nashville, Chattanooga & St. Louis instead of the Tennessee Central?

Mr. Morgan: Yes, sir.

Mr. Jouett: Well, you do not seriously contend that a mistake of that sort, for which the Louisville & Nashville Railroad was not responsible, or none of the railroads were responsible, should condemn this switching practice?

Mr. Morgan: Well, I think it has that influence on

shippers who have to be more careful and all that.

Mr. Jouett: Do you think that it is unreasonable to ask a business man, engaged in important business transactions, to be reasonably careful?

Mr. Morgan: No; that is all right. It would have just saved that much money at that time if they had

shipped it for \$3.

Mr. Jouett: And that \$8 was caused there because you had written the T. C. badly to look like I. C., or the other fellow read it I. C. and mistook the initials?

Mr. Morgan: No, sir; only if we had had the free

switching charge it would have saved that \$8.75.

Mr. Jouett: But do you think one mistake in a thousand of that character ought to upset the policy of a business if that policy be reasonable and just in other respects merely to save you from occasional mistakes?

Mr. Morgan: I should think that would have some

effect.

Mr. Jouett: You think it ought to change the policy regardless of the merits?

Mr. Morgan: No, sir; not absolutely. I just think it

would have some effect on the case, that is all.

Mr. Jouett: Now, as to the fourth illustration that you made, the potatoes. If I understand that case there was no industrial track, no connection with any railroad and it was just merely a question of the convenience of somebody who had to haul in either event to the team tracks and thought he could have hauled more conven-

iently to the Tennessee Central than to the Louisville & Nashville?

Mr. Morgan: Well, there was a question of the shipper just taking it for granted that the Nashville, Chattanooga & St. Louis delivery would answer

this fellow's purpose just as well as the Tennessee

Central and took a shot at it.

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Mr. Jouett: But, it is a matter of fact there was not delivery on either one; that man was not entitled to delivery on either track; he had no track.

Mr. Morgan: No, sir; he just took the stand that he routed the shipment for Tennessee Central delivery, and we could not make him accept it.

Mr. Jouett: What Tennessee Central delivery?

Mr. Morgan: Tennessee Central here in Nashville? Mr. Jouett: On team tracks?

Mr. Morgan: On team tracks. Mr. Jouett: Well, where would the switching movement come in? We are not talking about team tracks in this case.

Mr. Morgan: Well, I just related that case as having

a bearing on this case, only-

Mr. Jouett: What bearing would it have on this case? Mr. Morgan: That is, if we did not have any switching rates to pay he could have switched it to the Tennessee Central for less money.

Mr. Jouett: Suppose there had been no switching, such as we now have; explain to the Commission how the

lack of a switching rule or the making of a switch-93 ing rule, one way or the other, would have affected

the case that you are now speaking of?

Mr. Morgan: As I understand it, that car arrived here by the Nashville, Chattanooga & St. Louis. If Dodson had requested it to be switched to the Tennessee Central team track he could have gotten it then for less money, that is, it is my idea they would make a lower rate.

Mr. Jouett: Let us assume, though, that there was no switching charge-let us assume we had reciprocal switching, what is sought here in the city of Nashville.

Mr. Morgan: Yes, sir.

Mr. Jouett: So that each road would switch for the other whether it came from competitive or non-competitive points, suppose that rule were in force, how would that help out the case of a man here you speak of who wanted something over to the Tennessee Central team track and instead of that it was taken to the Louisville & Nashville team track.

Mr. Morgan: It would just save my shipper \$5 switching charges.

Mr. Jouett: Tell me how the rule as I have stated—Mr. Morgan: Because Mr. Dodson would have called up the Louisville & Nashville and asked them to

94 switch it to the Tennessee Central.

Mr. Jouett: You mean would have asked the Louisville & Nashville or the Nashville, Chattanooga & St. Louis to switch from its team track over to the Tennessee Central team track, because the shipper could haul more conveniently from the Tennessee Central team track.

Mr. Morgan: Well, if there is no switching charge at

all they would do it free of charge, wouldn't they?

Mr. Jouett: You never heard of that in the world, did you?

Mr. Morgan: They would do it, if there was no

charge!

Mr. Jouett: Certainly not. No railroad would switch a car from its own team track over to another railroad's team track simply because it was more convenient for the shipper to haul from there than from another. We are speaking of industry tracks.

Mr. Morgan: I was mistaken then, I thought they would make that switching free of charge that way if

there was no switching charges.

Mr. Jouett: No; you are mistaken in that. Mr. Morgan: Well, I beg your pardon.

Mr. Jouett: Now, the fifth illustration that you made is a case of an occasional consignment where

it is brought in for Louisville & Nashville delivery and you say you will take a chance, receiving your goods and trying to find a purchaser on the Louisville and Nashville?

Mr. Morgan: Yes, sir, I will take a chance?

Mr. Jouett: You did take that chance, did you not?

Mr. Morgan: Yes, sir.

Mr. Jouett: And you knew that the Louisville & Nashville would not ship that over to the Tennessee Central industry?

Mr. Morgan: Sure.

Mr. Jouett: When you took that chance, where have you any right to blame the Louisville & Nashville switching policy for it?

Mr. Morgan: I just thought like in the other case they would switch that car free of charge and we could

sell it to a Tennessee Central man.

Mr. Jouett: You mean that you could order it in here

over either road, and in case you could not find a purchaser on that road, that you could then have the right to ask that railroad to switch it across the town to the other railroad?

Mr. Morgan: Yes.

Mr. Jouett: That is what we call intracity switching,
I believe, transportation in the city. You know
that railroads are built to do transportation hauls
and not drayage service, do you not?

Mr. Morgan: Yes, sir; I understand that.

Mr. Jouett: That is all, sir.

Mr. Henderson: Mr. Morgan, under consigned cars if they were sold before they reached Nashville they could be ordered to industries on the Tennessee Central without being placed on the team tracks of the Louisville & Nashville or being placed at all on the Louisville & Nashville, if you sold them before they reached here?

Mr. Morgan: That is, if we sold them in time to

divert them.

Mr. Henderson: That is all.

(Witness excused.)

G. C. BILLINGSLEY was called as a witness and having been duly sworn, testified as follows.

DIRECT EXAMINATION.

Mr. Henderson: Mr. Billingsley, what is your residence and occupation?

Mr. Billingsley: Nashville, in the furniture business.
Mr. Henderson: How long have you been in the
furniture business at Nashville and on what terminal tracks has your warehouse been located in that

Mr. Billingsley: About seven years, and it is on the Nashville Terminals, or the Nashville, Chattanooga &

St. Louis Railroad.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central, the Nashville, Chattanooga & St. Louis or the Louisville & Nashville governing the switching of furniture at Nashville?

Mr. Billingsley: Yes, sir; if I understand it it is an

extra charge on competitive business.

Mr. Henderson: Have these rules at any time caused you any loss of business or loss of money or anywise inconvenienced you in the conduct of your business?

Mr. Billingsley: Yes, sir; the concern I am with, it

has.

Mr. Henderson: In what respect, please?

Mr. Billingsley: Well, it has inconvenienced us in having to be so mindful when we order goods to give a routing, and it has inconvenienced us or the one from who we buy goods in carrying out our instructions, and then we have been inconvenienced by some railroad

clerks, I suppose, in not carrying out instructions on the bill of lading after the shipment had started.

Mr. Henderson: Have you any specific instances where these competitive switching charges have been ap-

plied?

Mr. Billingsley: Well, I did not go back to hunt very much, when I was notified the other day I had to come up here. Two cases that came in right recently, and they were on my desk, or headed for my desk at the time; one is a car of metal beds from Evansville. This car was bought by the buyer down there, and he overlooked giving the routing as he does quite often, and before I knew the beds were bought and could get a routing in, it had been shipped, or before I did do it, and came Tennessee Central. This, of course, was our fault. We had the car drayed—that is, we had a transportation company here to carry the beds on to our warehouse, which was about two city blocks.

Another case which was right along at this immediate time, was a car of chairs from North Carolina. This company—it seems that the shipping clerk, in the face of two routing orders, left the Nashville, Chattanooga & St. Louis Railroad off the bill of lading, and the Southern turned it over to the Tennessee Central. This came in, and it was the shipper's fault and we wrote them about

it and told them we were going to have the chairs hauled over and charge them back with the expense

and they agreed to it and sent us a credit memorandum for it. Now, this charge that we paid out to have those chairs hauled does not represent half the loss, I would not think, on this movement, in this way, simply because the chairs are easily damaged, they are cheap chairs and do not come wrapped very well and the dam-

age amounts to more than the drayage, I think.

Then, another case that I call to mind, which was sometime back where the railroad erred; instead of a car of cotton material from Northern Alabama coming Nashville, Chattanooga & St. Louis it came Tennessee Central, or Southern; that is, when the Southern had the eastern division leased, and this car came in, and as well as I remember, someone who received the message that it was on the Tennessee Central asked me what to do with it and I told them to instruct them to switch it to the

warehouse without knowing or investigating thinking it was a non-competitive point. Mr. Huggins, of the Nashville, Chattanooga & St. Louis switched it over and made a charge of about \$29.00 and he and I had that up possibly a month before I agreed to pay it.

I tried to make claim against the Southern Rail-100 road, that it was their error, for the \$29.00 before I turned it loose, but I had nothing to show I had been damaged until I paid it, and I paid it and then filed

a claim and collected it.

Mr. Henderson: Mr. Billingsley, that car that you just mentioned, that you paid \$29.00 switching on, how far was that car handled by the Nashville, Chattanooga & St. Louis from the Tennessee Central Connection to

your factory?

Mr. Billingsley: Well, it would depend on where they turned it loose. If I understand, Baxter Heights, or Shops Gates is around from Charlotte Pike back of the new shops, back there somewhere. If it had been turned over there it would have been about a mile and a half, I guess, if there is a physical connection, and I understand there is, about 2 and a half blocks, right at the Harley Powder Company.

Mr. Henderson: It would not have been over a mile and a half though, even if it had been delivered at Baxter

Heights or Shops Junction?

Mr. Billingsley: I do not think it would have been over that.

101 Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Billingsley, in each one of the instances you have mentioned the loss occurred through the mistake of somebody other than the railroad company, did it not?

Mr. Billingsley: Other than the railroad company?

Mr. Jouett: Yes.

Mr. Billingsley: One case I mentioned.

Mr. Jouett: Was one of them a railroad mistake?

Mr. Billingsley: Yes.

Mr. Jouett: Now, in that case, the railroad immediately drayed the goods, did it not?

Mr. Billingsley: Where they made the error?

Mr. Jouett: Yes.

Mr. Billingsley: Well, they were instructed to transfer it to our warehouse which they did. And of course, they handled that car with the understanding, I suppose, that they got their rate, as I understand it now, as I

remember it they collected it from the nearest station to Nashville, which was about 6 cents a hundred.

Mr. Jouett: In that case you mean, you went back to the division station and took constructive delivery at

the junction point and charged that rate in, or did they charge the regular local rate to the first station out.

Mr. Billingsley: Well, in taking that up with Mr. Huggins, the chief clerk, we had the tariff there and they showed me where the tariff allowed them to make a charge, I believe it was the nearest station coming in. I suppose that would be the nearest station out, would it not?

Mr. Jouett: Yes. In that case you did not have to pay it?

Mr. Billingsley: We paid it, but they scared us about it; we did not know we were going to get it back.

Mr. Jouett: How is that?

Mr. Billingsley: We paid it, but we did not know we were going to get it back.

Mr. Jouett: You felt a little uneasy for a while?

Mr. Billingsley: Yes, sir.

Mr. Jouett: You did not measure in dollars, though, that mental anguish?

Mr. Billingsley: I beg pardon.

Mr. Jouett: Never mind. The only one you had to pay, then, was the \$29?

Mr. Billingsley: We paid that, but got it back.

Mr. Jouett: Did you get that back?
Mr. Billingsley: Yes, sir.

Mr. Jouett: Then you got them all back?

Mr. Billingsley: No, sir.

Mr. Jouett: Which one did you say that you did not get back?

Mr. Billingsley: The one we overlooked giving in-

structions on.

Mr. Jouett: Yes, that was your fault?

Mr. Billingsley: Yes, sir. Mr. Jouett: That is all.

Mr. Billingsley: That is not where the loss comes in.

Mr. Jouett: I understand; you say the injury.

Mr. Billingsley: The material loss.

Mr. Jouett: Now, as to any damage in draying, is that damage done by the public dray man here in Nashville?

Mr. Billingsley: Some of it; some of it we do ourselves. Mr. Jouett: If they cause a damage they are responsible for it, are they not?

Mr. Billingsley: Well, how will you ascertain the damage. A chair rubbed here and there and yonder?

We have to stand it.

Mr. Jouett: I don't know, somehow you do it.
I supposed your man knew the condition when taken out of the car, and if there was any damage done in draying over the drayman would be responsible for it.

Mr. Billingsley: Why, the damaged goods come into us, I have charge of that claim department, and we positively do not get half of the damage done, either by

draymen or the railroads.

Mr. Jouett: How many cars do you handle in a year!

Mr. Billingsley: Coming in?

Mr. Jouett: Yes.

Mr. Billingsley: I guess a hundred; that is a guess.

Mr. Jouett: A hundred cars a year?

Mr. Billingsley: Yes.

Mr. Jouett: How many years have you been in business?

Mr. Billingsley: About seven.

Mr. Jouett: And in that seven hundred cars do you recall others besides the one you mention here?

Mr. Billingsley: Yes, sir. Mr. Jouett: What others?

Mr. Billingsley: Well, I recall one from Lyman, Mississippi, Tennessee Central, had to be either switched or drayed. I recall another coming from North Carolina

that came in Tennessee Central. I did not go back and search and hunt through the records to get evidence. I could have gotten more if I had tried, but I remember a number of cases; I could not go along and specify them without going back to the records.

Mr. Jouett: You do not remember any where you suffered any financial loss except what occurred incident

to the dravage?

Mr. Billingsley: Yes, sir; one of the three I men-

tioned we suffered a financial loss.

Mr. Jouett: I mean, except the one—I am speaking of—

Mr. Billingsley: Yes, sir; there were others.

Mr. Jouett: That is all. Mr. Henderson: That is all.

(Witness excused.)

J. W. CRUTCHER was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Crutcher, what is your residence and occupation?

Mr. Crutcher: Nashville, grain and feed business.

Mr. Henderson: Have you a corn sheller in your plant where you do that business for people other than your own concern?

Mr. Crutcher: Yes, sir; both.

Mr. Henderson: How long have you been in the grain business at Nashville and on what Terminal tracks have you been located during that time?

Mr. Crutcher: I have been here about six years and

I have been on the Tennessee Central.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central, Nashville, Chattanooga & St. Louis and the Louisville & Nashville governing the shipment of grain at Nashville?

Mr. Crutcher: I think I am, fairly well.

Mr. Henderson: Have these rules at any time caused you any loss of business or loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Crutcher: Yes, sir; a good many times.

Mr. Henderson: In what respect?

Mr. Crutcher: Well, as to the corn sheller, corn that comes in on the Nashville, Chattanooga & St. Louis or the Louisville & Nashville roads, we can not handle that at all, because the railroad has given the privilege to the

Hermitage Elevator, where the other sheller is, the same as ours, they deliver that there free of charge,

I think, or possibly \$2 a car—something like that; I do not know just how that is, but if it goes to our sheller we have to pay 2½ cents a hundred on the Louisville & Nashville or the Nashville, Chattanooga & St. Louis Railroad and 2½ cents a hundred on the Tennessee Central, that is, from non-competitive points.

Mr. Henderson: Now, right there, Mr. Crutcher; is your sheller located on the same terminals as the Hermit-

age Elevator?

Mr. Crutcher: The same as the Hermitage, yes. Well, the sheller, of course, at the Hermitage Elevator can handle that corn over us at any time, because 5 cents a hundred puts us entirely out of competition, and we can not buy.

Mr. Henderson: Any grain that reaches Nashville from a competitive point via the Louisville & Nashville or the Nashville, Chattanooga & St. Louis would cost you $2\frac{1}{2}$ cents to get it to your sheller and then $2\frac{1}{2}$ cents to

get it back to the Louisville & Nashville or the Nashville, Chattanooga & St. Louis?

Mr. Crutcher: Yes.

108 Mr. Henderson: With the switching rate the same as the Hermitage Elevator enjoys, is there any reason why you could not get a fair share of that business?

Mr. Crutcher: Why, we should handle, I suppose, about as much as the Hermitage Elevator would handle, very nearly any way, so far as ear corn is concerned, husked corn.

Mr. Henderson: Well, in shipping corn out of Nashville to the southeast, you have to ship via the Tennessee Central?

Mr. Crutcher: Yes, sir; unless we dray it across.

Mr. Henderson: Dray it across or pay 21/2 cents a

hundred, is that correct?

Mr. Crutcher: Yes. We lost two or three good customers in the southeast, where we sold a heap of stuff. They refused to take the feed over the Tennessee Central because it took about two or three days longer to get it there than over the Nashville, Chattanooga & St. Louis line. We could not afford to haul those cars across from our place to the Louisville & Nashville or Nashville, Chattanooga & St. Louis, and consequently we had to lose that business. We can not come in competition with other places where they feed and sell it in that way, and we just simply had to drop that kind of business; not doing any at all.

Mr. Henderson: Do the present rules on all the lines in your opinion operate to the disadvantage

of the grain business in Nashville, or not?

Mr. Crutcher: I think it operated very much against the grain business in Nashville in a good many ways. Now, so far as we individually are concerned, we very often get cars coming in here that are routed all right, and everything, but they get off the road someway, the directions on the bill of lading is all right, perfectly all right, but they will divert it someway, somehow—the railroad people, which ones I don't know, of course—but when it comes down here the first thing we have to do to get that car of stuff we have got to go and get the bill of lading. They force us to do it. It is the only way they will do it. We have got to go and get the bill of lading and pay the freight, pay everything on it and leave a check in the bank, to get that car, and then carry it to the Louisville & Nashville, or the Nashville, Chattanoga & St. Louis and then he gives us a check back after

we pay the freight. We have got to pay the freight twice before we get it. In the first place, before we ever get to that, though, they have got to find out whether they are in fault or not—that is the read—and if they

are in fault or not—that is, the road—and if they are they will deliver it all right, or pay the drayage; they have done that a number of times for us.

age; they have done that a number of times for us, which is all right, but while that is going on—it may take them a week to find out whether they are in fault or we are in fault or the shipper is in fault—while that is going on the grain may have gone down 5 cents a bushel; that has happened several times.

Commissioner Meyer: I am not sure I understand just what you mean by saying you have to pay the freight

twice.

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Mr. Crutcher: If we have got a car of corn on the Louisville & Nashville, for instance, and the freight on that car from wherever it comes from is about \$50 or \$75, and it usually is about that amount, we have to go to the bank—they won't take our word for it—we have got to go to the bank and take up that bill of lading. In doing that we have got to pay the freight bill, we pay the whole amount, we carry that down to the Louisville & Nashville road and give them a check for the freight, then they give us back the other amount and then we take it out of the bank. In other words, we can not get the bill of lading out of the bank—shipper's order—that is something none of

us can do. We have got to go and take that up and
pay the whole thing off, and then we have got to
go down there and show how the routing is and

pay them the freight, and then they pay us back.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Crutcher, I just want to ask you about the Hermitage Elevator matter. Your track, your industry, is situated on the Tennessee Central tracks, is it not?

Mr. Crutcher: Yes, sir.

Mr. Jouett: And if I understand you, in the case of shipments of grain coming into Nashville over the Louisville & Nashville, the Tennessee Central will handle that grain from the point of interchange to the Hermitage Elevator, which is on the Tennessee Central line, is that right?

Mr. Crutcher: I think so; I think they will handle it to them; I don't know. I think there is an arrangement—now, I have heard; I don't know anything about that—that they do deliver grain to the Hermitage Elevator.

Mr. Jouett: That means that the Tennessee Central road does it?

Mr. Crutcher: I don't know about the Tennessee

Central.

Mr. Jouett: You know the Louisville & Nashville 112 does not go over on the Tennessee Central with its engines?

Mr. Crutcher: Don't you deliver cars on the Louis-

ville & Nashville road for \$2 a car?

Mr. Jouett: No, sir; the Louisville & Nashville road, as I understand it, only goes to the point of interchange. It can not go on the other road's tracks.

Mr. Crutcher: Well, if they should do that they would -the Tennessee Central will carry them on to the Herm-

itage Elevator.

Mr. Jouett: I want to get the transaction, if you understand it and know it and can tell us, what the transaction is in the case of a shipment going to the Hermitage Elevator coming in over the Louisville & Nashville; the Louisville & Nashville brings it to a point of interchange between the Louisville & Nashville and the Tennessee Central, and if I understand you, the Tennessee Central will then carry that car from the point of interchange to the Hermitage Elevator on its tracks.

Mr. Crutcher: Well, I am not here, you know, to tell about the Hermitage, because I am not familiar with it.

Mr. Jouett: I thought you were complaining of some differences between the arrangement at your plant

113 and the Hermitage plant.

Mr. Crutcher: Here is what I am talking about: While there is an arrangement, that it is discriminatory between us, and I will tell you why. Mr. Kerr handles quite a lot of corn in here, he buys it and it is sent to him from a good many places, and we buy it from a good many places, but I am just speaking of Mr. Kerr's corn now, and that is one thing we have had a great deal of trouble here this winter and last winter we had a great deal of trouble, but he will get a car of corn down there and if it comes from a competitive point we can not buy that corn from him because it costs us 21/2 cents to get it from Baxter Heights—that is where we usually get it and then it costs us 21/2 cents to get it down to our place over the Tennessee Central.

Mr. Jouett: You mean you pay the Tennessee Cen-

tral that additional amount?

Mr. Crutcher: Yes, sir; that is, 5 cents a hundred it costs us to get that corn down there when they willthe Louisville & Nashville and Nashville, Chattanooga & St. Louis people will—I know that because I have had corn shelled at the Hermitage myself-they will deliver that corn to the Hermitage.

Mr. Jouett: You do not mean that the Louisville & Nashville will deliver to the Hermitage them-114

selves, do you?

Mr. Crutcher: I don't know how it gets there, but it

gets there at a saving to us of 21/2 cents.

Mr. Jouett: Is it not a fact, Mr. Crutcher, that the Louisville & Nashville will deliver that corn to the point of interchange, and that it is then up to the Tennessee Central to say whether it will carry it to your plant or whether it will carry it to the Hermitage plant?

Mr. Crutcher: Well, you can get that corn-

Mr. Jouett: Well, in other words, I want to see if you are making any charge there against Louisville & Nashville or the Nashville, Chattanooga & St. Louis, and if so, what is the charge?

Mr. Crutcher: Well, my understanding is that they will carry the corn to the Hermitage and if it comes to

our place it costs 21/2 cents.

Mr. Jouett: Whom do you pay it to?

Mr. Crutcher: We pay—if we get it down there we pay to the Tennessee Central.

Mr. Jouett: Then, the Louisville & Nashville is not dealing with you after it gets to the point of interchange?

Mr. Crutcher: Well, it costs us 5 cents a hundred. 115 the Louisville & Nashville charge follows the Tennessee Central charge, so we pay it all to the Ten-

nessee Central.

Mr. Jouett: Well, the Louisville & Nashville delivers into Nashville? Now, don't you know that the Louisville & Nashville is glad to absorb the switching charge on any competitive business to any point on the Tennessee Central terminals that the Tennessee Central will take it to?

Mr. Crutcher: Well, they take it there, I suppose, where it comes in at Baxter Heights, but whenever this corn comes into Nashville, either shelled or ears, for that matter— we have lots of trouble on both—say, that corn is carried to an elevator or warehouse in South Nashville and it is placed there, and we want to buy a car of that corn, or a dozen, for that matter-whatever it may beafter that corn has been placed, we can not buy that corn unless we pay the Louisville & Nashville or the Nashville, Chattanooga & St. Louis people 21/2 cents a hundred, and when it comes to our road we have got to pay that same thing to get it into our house.

Mr. Jouett: That is not a question of switching, is it, that you pay from the elevator—

Mr. Crutcher: Isn't that a switching charge there,

that 5 cents we have to pay?

be; I do not clearly catch that proposition. Let me ask you a question and see whether you can answer this, and then we can get down to it step by step. Bearing in mind now, the case of a shipment of corn that comes from a competitive point destined to the Hermitage Elevator, and goes over the Louisville & Nashville line, do I or do I not understand you to say that when the Louisville & Nashville bring that up to the point of interchange that the Tennessee Central will take the car on to the Armitage Elevator? Will it or will it not?

Mr. Crutcher: I don't know what it does for the Hermitage, I am talking about ourselves; I am not run-

ning the Hermitage business, you know.

Mr. Jouett: Didn't you start out talking about dis-

crimination in favor of the Hermitage Elevator?

Mr. Crutcher: I have only heard that from grain people; Mr. Kerr has always brought it up whenever he had a car that way; that he could not let us have the car on account of being able to get it into the Hermitage Elevator and could not get it around to us. I do not know a single thing about the arrangement; that is what I

have heard.

117 Mr. Jouett: Let me get to another point. What you do complain of is when a car comes over the Louisville & Nashville destined to your elevator—have you an elevator?

Mr. Crutcher: I have a small elevator and a ware-

house.

Mr. Jouett: Well, destined to your elevator, that the Louisville & Nashville bring it to the point of interchange but that the Tennessee Central will not carry it to your elevator, without charging you a local rate, is that right?

Mr. Crutcher: The Tennessee Central charges a

local rate, of course.

Mr. Jouett: I mean the Tennessee Central.

Mr. Crutcher: Yes, sir.

Mr. Jouett: Well, you are making no complaint there of the Louisville & Nashville or the Nashville, Chattanooga & St. Louis? I am just trying to locate who you are complaining against.

Mr. Crutcher: Here is what I am trying to complain of, when a car comes in here, it don't make any difference what kind it is, when it comes on the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, I have a right to have that car placed anywhere I want it, Bax-

ter Heights, or Walnut Street or anywhere else.

They will place that car there all right; there is no trouble about that— but when I bring that car

from Baxter Heights down to my place there is a charge of $2\frac{1}{2}$ cents a hundred I have to pay, and that makes it

higher on a car of stuff.

Mr. Jouett: You pay that to the Tennessee Central? Mr. Crutcher: Here is the point I am trying to make right there: That gives us a world of trouble; that is, after the car has been placed in an elevator or warehouse on Walnut Street, or wherever it has been placed, if we want to buy that car and be able to buy that car of stuff and put it on the Louisville & Nashville road or the Nashville, Chattanooga & St. Louis road we have got to pay a 2½-cent rate then to get that to Baxter Heights, then we have got to pay 2½ cents to get it down to our place, which is 5 cents, and that, you know, is unreasonable.

Mr. Jouett: Who do you buy from?

Mr. Crutcher: We buy from people from here and

from Canada—I don't know; lots of them.

Mr. Jouett: You spoke of a car properly brought to a place on the Louisville & Nashville, now, you say you want to buy that car at that price on the Louisville

& Nashville and require it to be handled over on to the Tennessee Central and you object to pay-

ing the local rate for it. Now, tell me this, Mr. Crutcher; don't you know that that movement is not a part of the transportation movement, that that is merely a movement within the city and that none of the railroads do that?

Mr. Crutcher: I don't know what the railroads do or do not. I am not in the railroad business. I know this, I know that when that car is charged $2\frac{1}{2}$ cents from one railroad over here and $2\frac{1}{2}$ from another right around over here, which was five cents a hundred, when we can go to Pensacola, Florida, for instance—

Mr. Jouett: Yes, sir.

Mr. Crutcher: I believe it is, for 12 cents a hundred,

I know that is unreasonable.

Mr. Jouett: Well, you do know, do you not, that that is not a switching service at all, that that is not in connection with a transportation haul that is involved in this proceeding today as to what shall be the switching service at the beginning or at the end of a transportation haul, but what you are complaining of is a rate that is

too high as you claim it, for draying service performed by railroads from a point on one railroad in the City of Nashville to a point on another railroad in the City of

Nashville; is that right?

Mr. Crutcher: I am complaining of how much it costs me to get this stuff across the city.

Mr. Jouett: From one point in the city to another

point in the city.

Mr. Crutcher: From one point to our point and from

our point to another point.

Mr. Jouett: Without regard to the transportation haul, it has lost its identity when it gets into some place here? That is all.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Crutcher, is it not a fact that a car of corn moving into Nashville from a competitive point, we will say Cairo, Illinois—if it reaches Nashville via the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, how much does it cost you to get it from Baxter Heights to your warehouse?

Mr. Crutcher: That would cost us 21/2 cents a hun-

dred.

Mr. Henderson: 2½ cents a hundred?

Now, what would it cost you when you got ready to reship that car and wanted to reship it to a competitive point south via the Louisville & Nashville or the Nashville, Chattanooga & St. Louis? How much would it cost

to get it back to them?

Mr. Crutcher: Cost 2½ cents per hundred.

Mr. Henderson: Is any part of that 2½ cents in either direction absorbed or refunded to you by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis Railroads?

Mr. Crutcher: It is not, no, sir; because we did not do that reshipping on milling in transit; we stopped that a year and a half ago. It cost us more than it came to.

Mr. Henderson: None of this switching in either di-

rection is absorbed or refunded to you?

Mr. Crutcher: No, sir.

Mr. Henderson: You pay it all?
Mr. Crutcher: We pay it all.
Mr. Henderson: That is all.

RE-CROSS EXAMINATION.

Mr. Jouett: One question I did not ask you. You spoke of the Hermitage matter; then you also spoke of the difference in the service over the Tennessee Central

and the Louisville & Nashville. I want to ask you just a moment about that. What was your statement with reference to some shipments that went out over the line

of the Tennessee Central, the line upon which you are located to competitive points that could be reached by the Louisville & Nashville and which you said you preferred to send via the Louisville & Nashville.

Mr. Crutcher: I did not say I preferred it, I said my

shippers preferred it.

Mr. Jouett: Your shippers preferred it?

Mr. Crutcher: And would not accept it via any other way than via the Louisville & Nashville or Nashville, Chattanooga St. Louis. I did not specify the routing.

Mr. Jouett: Is not this, then, the substance of your complaint, that you are located on the Tennessee Central, and in some instances, why, shipments are made from competitive points, that is, points that could be reached by the Louisville & Nashville as well as the Tennessee Central, and you want the privilege of making the Tennessee Central give up its line-haul to that point and push that car from your industry on its tracks over to the Louisville & Nashville, and give the entire line-haul to the Louisville & Nashville to that competitive point, is that not right?

Mr. Crutcher: No, sir; you have the wrong idea there. I did not mean to get that into your head at all.

What I mean, I do not want a railroad to do anything, or anybody else, to do anything for me for nothing, but whenever it comes—I feel like we ought to have a reasonable rate around here in the city to switch these cars, and to take it on a reasonable amount and not to charge us $2\frac{1}{2}$ cents this way and $2\frac{1}{2}$ the other way, and sometimes even the rate was higher than that.

Mr. Jouett: Well, is not this your complaint: That with reference to this last matter about which I am asking you, that you want reciprocal switching in Nashville, so that by paying a \$3 switching charge to the Tennessee Central or letting the Louisville & Nashville absorb it, that you can have the Tennessee Central move your car from your industry to the point of interchange with the Louisville & Nashville and let the Louisville & Nashville carry out the line haul, the transportation haul, to competitive points, instead of you shipping it straight over the Tennessee Central to that competitive point, simply because you say the man at the other end complains that it takes two or three days longer to get it via the Tennessee Central; is not that what you are after?

Mr. Crutcher: You have not got it just exactly, I don't think, or I did not understand you, one, I don't know which.

Mr. Jouett: Will you please explain it, then?
Mr. Crutcher: I will explain it the best I
can.

Mr. Jouett: All right.

Mr. Crutcher: I had a customer in Savannah, Georgia, and I had another one—

Mr. Jouett: Let us take the one at Savannah,

Georgia.

Mr. Crutcher: The Savannah, Georgia, man wrote me a number of letters and he said "I notice when my shipments come in over the Nashville, Chattanooga & St. Louis road they get here one or two days sooner." He would run along until he ran clear out of feed, and then he would write "Ship this today, if you can." The only way we could get that car of stuff out then, was to dray it across to the Nashville, Chattanooga & St. Louis.

Mr. Jouett: Yes.

Mr. Crutcher: Because that man did not want it over the Tennessee Central; it had to take a route over through the Carolinas or somewhere else, before it got there, and took two or three days longer.

Mr. Jouett: He wrote us about it several times, and finally he wrote us, "I will just have to quit handling your stuff" I can not handle it via the Tennessee Cen-

tral."

When you are meeting competition in the south or any other country, you can not afford to dray your stuff across the town. It costs money, and when you go to pay that charge around there to get there, it still costs money, and when you do that you knock Nashville out of competition with St. Louis and a number of other places where feeds are made and sold into the southeast, and it is the same way with grain.

Mr. Jouett: Well, getting back to my original proposition, then, is not this what you want: A rule that will make the Tennessee Central, on which you are located, switch that over to the Louisville & Nashville at Nashville so that the Louisville & Nashville can take it to

Savannah?

Mr. Crutcher: You word it that way and I want it another. We do not want the Tennessee Central, or the Nashville, Chattanooga or the Louisville & Nashville Railroads to do anything, but here is what I feel like they ought to be made to do.

Mr. Jouett: What is it that they ought to be made to do?

Mr. Crutcher: That is, to handle these cars from one road to another, either way, at a reasonable charge. Not for nothing; we do not mind paying a reasonable price.

but when the stuff comes along there and you shift a car just a few hundred yards across from one road to the other, why, it depends upon the origin and everything, and what that is, as to how it costs.

and everything, and what that is, as to how it costs. It will cost us there from \$5 maybe up to \$25, and that is unreasonable to pull a car maybe for a mile or two miles.

Mr. Jouett: Mr. Crutcher, you are getting off of the proposition we were discussing. I just want to ask you definitely about the Savannah proposition, and then I am done.

Commissioner Meyer: If we can not get through with it before recess—

Mr. Jouett: Just one question, if that is agreeable, or I will adjourn.

Commissioner Meyer: Ask the question and get through with this witness, if possible.

Mr. Crutcher: I have got to get back to work.

Mr. Jouett: What you think they ought to be made to do is to charge a switching charge here in the city of Nashville to move the property, in your instance, the Savannah—for the Tennessee Central to move that car from your industry over to the Louisville & Nashville point of interchange, so that the Louisville & Nashville

or Nashville, Chattanooga & St. Louis can take the car on to Savannah. Is not that what you want?

Mr. Crutcher: At a reasonable charge. Mr. Jouett: At a reasonable charge?

Mr. Crutcher: Yes.

Mr. Jouett: You say a switching charge?

Mr. Crutcher: Yes.

Mr. Jouett: You mean a switching charge, don't you, whatever that is?

Mr. Crutcher: Yes; a switching charge, whatever that is.

Mr. Jouett: Well, a charge of \$3; is that or not reasonable?

Mr. Crutcher: The charge is \$3.

Mr. Jouett: What do you think of that as reasonable?

Mr. Crutcher: The charge of \$3 on-

Mr. Jouett: Non-competitive.

Mr. Crutcher: On a 30,000-pound car; if the car is heavier it is more than \$3.

Mr. Jouett: I am talking about non-competitive; it is \$3 is it not?

Mr. Crutcher: I think so.

Mr. Jouett: Do you or not, think that is a reasonable charge?

Mr. Crutcher: We don't complain of the \$3; that

128 is not what we are kicking about.

Mr. Jouett: Have you ever heard of anybody in Nashville complaining of \$3 as being an unreasonable switching charge?

Mr. Crutcher: I did not get that.

Mr. Jouett: I asked you if you ever heard of anybody in Nashville complaining of \$3 as being an unrea-

sonable switching charge?

Mr. Crutcher: I don't know that I have heard that complaint or any complaint of it. The \$3 is not very much, and we do not object so far as McLemore-Crutcher is concerned, we do not object to paying \$3, but we have had a number of cases where we could not get it around there for \$3 by a lot.

Mr. Jouett: Assuming the charge of \$3, what you want is that the Tennessee Central shall be required by an order that is being asked of the Commission, that it will be required to switch your car over to the Louisville & Nashville so the Louisville & Nashville can convey it

to Savannah. Is that what you want?

Mr. Crutcher: Yes, sir; that is what I want so far

as the Tennessee Central is concerned.

Mr. Jouett: Do you think the effect of that is—
129 Mr. Crutcher: And we want then to have the
Louisville & Nashville and the Nashville, Chattanooga & St. Louis road to be required to set our cars and
transfer them over there for \$3.

Mr. Jouett: For each other?

Mr. Crutcher: Yes, sir; we do not want to just make the Tennessee Central to do something, but want the other fellows to do the same as the Tennessee Central.

Mr. Jouett: Is it not a fact that because you happen

to live-

Mr. Crutcher: No, but you say the other way. The Louisville & Nashville and the Nashville, Chattanooga & St. Louis give us more trouble than the Tennessee Central.

Mr. Jouett: Is it not a fact, Mr. Crutcher, that as you happen to live on the Tennessee Central that your complaint is altogether against the Tennessee Central?

Mr. Crutcher: No, sir.

Mr. Jouett: As to switching?

Mr. Crutcher: No. sir.

Mr. Jouett: Have you a single case where-

Mr. Crutcher: I just told you about the numbers and numbers of cars of ear corn, and the numbers and numbers of cars of oats and shelled corn that 130 have been coming, and we have had to bring them over the Louisville & Nashville and the Nashville, Chattanooga & St. Louis?

Mr. Jouett: That is where you take a car over the

Louisville & Nashville into Nashville—

Mr. Crutcher: So what few cars we have to go out to Savannah and other places in the southeast, that does not cut much figure; we do not care much about that and those few cars we do ship; we are cut out of that because they want us to keep a bookkeeper to keep track of everything and we quit that.

Mr. Jouett: Just one thing, now, as to the switching

charge, you say that does not amount to much?

Mr. Crutcher: No. sir.

Mr. Jouett: You want the Tennessee Central to give us its line haul and turn this business over to the Louisville & Nashville and the Tennessee Central get a \$3 switching charge and the Louisville & Nashville get the line-haul?

Mr. Crutcher: No, we do not want the Tennessee Central to do that; we want the Louisville & Nashville and the Nashville, Chattanooga & St. Louis people to do that; we have no trouble on earth with the Tennessee Central.

Mr. Jouett: Are you not asking right there, and 131 I would like to keep the two separate; let us con-

fine ourselves to the Savannah question. Are you not asking relief against the Tennessee Central, or are you not asking this Commission to require the Tennessee Central to switch that car from your industry on the Tennessee Central track over to the Louisville & Nashville so the Louisville & Nashville can carry it?

Mr. Crutcher: No, sir; I am not.

Mr. Jouett: Then, how in the world do you expect to get that service to Savannah by way of the Louisville & Nashville unless the Tennessee Central will take it to the Louisville & Nashville?

Mr. Crutcher: If the Tennessee Central will not take it around there, we will dray it across; as I said, we have

very little of that.

Mr. Jouett: You are asking to be relieved of that draying by asking that the Tennessee Central be required to do it, are you not?

Mr. Crutcher: No, at a reasonable charge.

Mr. Jouett: Say \$3?

Mr. Crutcher: \$3 a car, we would not object to that. I have told you that a time or two; we don't object to paying \$3 a car for switching, let the car be 30,000

132 or 60,000 pounds.

Mr. Jouett: Do you or not now say that what you are now claiming is that the Tennessee Central ought to be required to switch that car over to the Louisville & Nashville point of interchange with the—

Mr. Crutcher: Haven't I told you two or three times

that I do not and we propose a reasonable charge.

Mr. Jouett: You say \$3?

Mr. Crutcher: Why do you keep asking me that?

Mr. Jouett: I am not trying to catch you and not trying to annoy you, but you do not seem to understand my question.

Mr. Crutcher: Yes I do.

Mr. Jouett: But seem to get away from it. Here is what I am asking, if you will just listen closely to the question, you can see whether or not that is what you are complaining of, then I will pass on to another matter.

You say the switching charge ought to be \$3, do you

not?

Mr. Crutcher: Yes, sir.

Mr. Jouett: Then, is not this what you are asking of the Commission: That the Tennessee Central be required

to switch that car that is going to Savannah from your industry to the point of interchange with

the Louisville & Nashville in order that the Louisville & Nashville may carry it on to Savannah, and to switch it for \$3, or whatever the switching charge would be? In other words, you are asking there relief against the Tennessee Central, your own road.

Mr. Crutcher: That is a part of what I am asking.

We propose to pay \$3 a car.

Mr. Jouett: All right.

Mr. Crutcher: We do not object to that on the Tennessee Central.

Mr. Jouett: All right.

Mr. Crutcher: Now, take up the Louisville & Nashville and the Nashville, Chattanooga & St. Louis; they are the ones that cause the trouble.

Mr. Jouett: I will take that up.

Mr. Crutcher: And you be just as careful now about talking about the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, as you were of the Tennessee Central.

Mr. Jouett: I will.

Mr. Crutcher: I don't know whether you will or not. Mr. Jouett: Now, what you have been talking about.

Mr. Crutcher, so far, has been a transportation 134 haul at one end, on which is a switching service, is that not right, namely, the Savannah haul and the switching service in Nashville?

Mr. Crutcher: You have left Savannah now, just talk about the Louisville & Nashville and the Nashville,

Chattanooga & St. Louis Terminal.

Mr. Jouett: If that is not connected otherwise with a transportation haul to or from Nashville, but is a matter of service between points in Nashville, you want the car taken from a point in Nashville on the Louisville & Nashville to a point over here on the Tennessee Central at your place at a reasonable charge?

Mr. Crutcher: I do; yes, sir.

Mr. Jouett: Now do you or not understand that that is not considered a switching service, because it is not connected with a transportation haul, but that is merely a matter of service within the terminals, which is not embraced in this complaint at all.

Mr. Crutcher: I do not know whether it is embraced in this complaint at all or not, but I know it should be in some way, because it gives us a heap of trouble over

here on the Tennessee Central.

Mr. Jouett: Well, that is a great big question

and I won't discuss it with you.

Commissioner Meyer: Are you through, Mr. Jouett?

Mr. Jouett: That is all with this witness.

Mr. Henderson: That is all.

(Witness excused.)

Commissioner Meyer: We will take a recess until 2:15, and we will sit this afternoon until five o'clock and this evening from 7:30 until ten.

Whereupon at 12:45 o'clock P. M. a recess was taken

until 2:15 o'clock.

136 AFTER RECESS.

2:15 o'clock P. M.

Mr. Henderson: Mr. Corbitt, will you be sworn, please?

J. H. Corbitt was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Corbitt, what is your residence and occupation?

Mr. Corbitt: Residence, Nashville; secretary and

treasurer of the W. T. Young Bridge Company.

Mr. Henderson: How long have you been in the bridge business at Nashville and on what terminal tracks has your factory or works been located during that time?

Mr. Corbitt: I have been connected with the Young Bridge Company since the first of June, 1913. The company, of course, did business a good many years previous to my connection with them.

Mr. Henderson: What tracks are you located on?

Mr. Corbitt: Located on the Nashville Terminals; that is, the Louisville & Nashville and Nashville, Chattanooga & St. Louis. 137

Mr. Henderson: That is East Nashville?

Mr. Corbitt: East Nashville; between the Spark-

man Street bridge and the river, we call it.

Mr. Henderson: Are you familiar with the rules of the Tennessee Central, the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis regarding your bridge iron and various articles you handle?

Mr. Corbitt: I am, in a general way.

Mr. Henderson: Have these rules at any time caused you any great loss of business or loss of money or in any wise inconvenienced you in the conduct of your business?

Mr. Corbitt: They have caused some inconvenience, some loss of money, in that we had to pay freight charges on the basis they assessed the freight from a competitive point. In one instance, of two or three cars, in particular.

Mr. Henderson: Have you the dates of those cars

and the points from which they moved?

Mr. Corbitt: Yes, sir; 2 I. C. cars shipped from Greenwood, Mississippi, June 13, 1913, shipped by our foreman, containing scrap iron and contractor's outfit consigned to ourselves at Nashville. Those cars should

have been delivered to the Nashville, Chattanooga 138 & St. Louis at Jackson, Tennessee, and instead the

Illinois Central delivered the cars to the Tennessee Central, and as the result, on arrival at Nashville we had to pay switching charges on the basis of 3 cents per hundred pounds on the scrap iron and 6 cents per hundred pounds on the contractor's outfit, making a sum of \$9.66 and \$14.40 respectively switching charges paid to have the cars delivered at the plant located on the Louisville & Nashville Terminal Company's tracks.

Mr. Henderson: Do you know how far it is from Baxter Heights, the point of connection of the Louisville & Nashville and Tennessee Central, to your plant in East

Nashville?

Mr. Corbitt: Not exactly, but approximately I should say not to exceed 4 miles, on the basis of 3 miles from Baxter Heights to East Nashville, the breaking-up yard, and about a mile from the East Nashville yard down the spur track to our plant.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Did you pay this local rate for handling the cars at Nashville yourself?

Mr. Corbitt: Yes, sir.

139 Mr. Jouett: Was it paid back to you by anybody?

Mr. Corbitt: It has not yet.

Mr. Jouett: Have you made application for it?

Mr. Corbitt: I have a claim with the Illinois Central

road, but it has not been allowed yet.

Mr. Jouett: Well, you know it will be, do you not?
Mr. Corbitt: I don't know. They have declined it
once and I have called their attention to the instructions
in the rulings, and notified them that unless it was allowed we would institute the necessary proceedings to
collect.

Mr. Jouett: In that case, the car was diverted, or rather was not brought in according to your routing in-

structions?

Mr. Corbitt: It should have been delivered to the Nashville, Chattanooga & St. Louis at Jackson, in order

to make delivery to our plant.

Mr. Jouett: That is just a plain case of where the carriers or somebody on the other line failed to route it correctly, and, therefore failed to route it over the Nashville, Chattanooga & St. Louis?

Mr. Corbitt: The agent of the Yazoo & Mississippi Valley, which of course is a subsidiary of the Illinois

Central, admits his oversight, and even on that the Illinois Central has thus far declined to entertain the claim.

Mr. Jouett: Now, how many cars a year do you

handle, Mr. Corbitt?

Mr. Corbitt: We receive in, I should say, approximately anywhere from a thousand to 2,500 tons of steel, averaging 30 tons to the car, and we ship out practically the entire amount of incoming freight after fabricating it.

Mr. Jouett: How long have you been in business? Mr. Corbitt: We have been in business at the present location and under the present corporation for a period of 10 years.

Mr. Jouett: And in this one instance, the one you mention, you have not lost anything if the Illinois Cen-

tral pays this claim?

Mr. Corbitt: Well, we have not-during my connection with the company that is the only instance that has actually occurred, for the reason that we are always careful to specify the routing.

Mr. Jouett: And when you do it comes over the Louisville & Nashville or the Nashville, Chattanooga & St. Louis to your industry?

Mr. Corbitt: Yes, sir.

Mr. Jouett: They give you good service, do they not?

141 Mr. Corbitt: Yes, sir.

Mr. Jouett: You are perfectly willing and would prefer to have it over the Nashville, Chattanooga & St. Louis, would you not?

Mr. Corbitt: Well, for obvious reasons we want our shipments to come over the Nashville, Chattanooga & St.

Lonis.

Mr. Jouett: You are located on that line?

Mr. Corbitt: For the reason that we are located on their line; we could do business, though, in getting steel from the East, from Pittsburgh, if located on the Tennessee Central, just as well, but since we are not, it is more to our advantage to have the shipments routed over the Nashville, Chattanooga & St. Louis or the Louisville & Nashwille.

Mr. Jouett: That is all, sir. (Witness excused.)

142 R. H. McClelland was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. McClelland, what is your residence and occupation?

Mr. McClelland: Nashville; occupation grain mer-

chant.

Mr. Henderson: What is the name of your firm? Mr. McClelland: J. H. Wilkes & Company.

Mr. Henderson: You are an officer of that company?

Mr. McClelland: Yes, sir.

Mr. Henderson: Where is your warehouse or elevator located?

Mr. McClelland: You mean on what tracks?
Mr. Henderson: On what terminal tracks?

Mr. McClelland: Louisville & Nashville and Nash-

ville, Chattanooga & St. Louis.

Mr. Henderson: Are you familiar with the rules of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis and the Tennessee Central governing the switching of grain and grain products at Nashville?

Mr. McClelland: Yes; reasonably so; I do not do any

business with the Tennessee Central.

Mr. Henderson: Is it not a fact that the Louisville & Nashville and Nashville, Chattanooga & St. Louis charge you, or would charge you, a switching rate of 2½ cents per hundred pounds on grain reaching Nashville via the Tennessee Central Railroad from a competitive point?

Mr. McClelland: Well, I do not know. I have never had occasion to have any moved. I understand that is

the rate.

Mr. Henderson: You are not familiar with the tariff?

Mr. McClelland: No.

Mr. Henderson: Have you at any time been inconvenienced on account of the switching rules in effect at Nashville?

Mr. McClelland: Oh yes; frequently.

Mr. Henderson: Have you any specific case that you can cite where these rules have inconvenienced you or cost you any money or loss of business or otherwise?

Mr. McClelland: Well, a few days ago I bought a car of buckwheat from the Hermitage Elevator, and had to have it sacked and moved to a switch near our plant and then had to haul it from the plant to our elevator. That was cheaper than to pay the terminal charge or switching charge.

Mr. Henderson: That also cost you the price of

144 the sacks and the drayage?

Mr. McClelland: No; the sacks are worth what I paid for them, except that I had to buy new sacks. That should hardly be counted a part of the cost, because the bags are of some value.

Mr. Henderson: Have you had any occasion to try to buy any grain products in Nashville which reached here from competitive points and arrived via the Tennessee

Central?

Mr. McClelland: No; I never tried to buy them, because I knew I could not handle them; but I did, in December of last year—C. U. Snyder & Company of Chicago wired me to know if I could handle two cars of malt sprouts—

Mr. Jouett (interrupting): Two cars of what?

Mr. McClelland: Malt sprouts, used for dairy feed; they had in some way reached here by the Tennessee Central Railroad, and I, of course, did not handle them, and I so wired them, that our plant was not accessible to the Tennessee Central tracks, and I could not handle them to advantage, and I have a letter from them here—

Mr. Jouett (interrupting): I object to the introduc-

tion of the letter, unless it is-

Mr. Henderson (interrupting): Is that letter addressed to J. H. Wilkes & Company?

Mr. McClelland: J. H. Wilkes & Company, yes, sir.

Mr. Henderson: Does it show final disposition which Mr. Snyder made of those malt sprouts?

Mr. McClelland: Yes, sir; he disposed of them to a party here in Nashville, and had them hauled across the city.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. McClelland, you have cited two instances, and only two; that is the transaction with reference to the Hermitage Elevator and with reference to these malt sprouts. Now, as to the Hermitage Elevator transaction, if I understand you, what you wanted there was a car to be moved from that elevator on the Tennessee Central over to your industry on the Nashville, Chattanooga & St. Louis in Nashville, is that right?

Mr. McClelland: Well, in a measure, yes; all I

wanted was the wheat.

Mr. Jouett: I say, you wanted to buy some wheat over on that elevator, and wanted—

Mr. McClelland (interrupting): To get it to our

plant, yes, sir.

Mr. Jouett: And wanted these railroads here to transport it for you to another point in Nashville;

that is right, is it not? It had nothing to do with the transportation at all; that wheat was not shipped to you from some point outside of Nashville, some other city, was it?

Mr. McClelland: No.

Mr. Jouett: It was just simply a matter of your wanting them to do that drayage service in the city, and they declined to do it?

Mr. McClelland: No, the grain came here consigned to another man.

Mr. Jouett: I say, it had nothing to do with you?
Mr. McClelland: So far as I am individually concerned, no.

Mr. Jouett: You wanted to buy that grain at that

elevator and move it to your place?

Mr. McClelland: And I bought it on that basis; the owner of the wheat suffered, because I had to ship it out

on a flat billing.

Mr. Jouett: I know, but the only transaction that you testified about, or that is here involved, is that transaction of handling that from the elevator to your place, equivalent to a drayage service in the city, and you

thought that that charge was too high for that, is that correct? Or did they refuse to do it en-

tirely?

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Mr. McClelland: I did not ask them to.

Mr. Jouett: Now, the other transaction, if I understand you, was a case where somebody in Chicago had sent two cars of malt sprouts south, or somewhere else, and they had turned up on the Tennessee Central tracks here at Nashville?

Mr. McClelland: That is right.

Mr. Jouett: And what they wanted to do was to sell you those sprouts here in Nashville, and what you wanted was for the railroads to dray them across the city, or do the drayage service by bringing them from the Tennessee Central tracks to your place on the Nashville, Chattanooga & St. Louis tracks, is that correct?

Mr. McClelland: Well, I would not put it exactly that way. I did not want them to do it, because I was not interested and I knew it could not be done, and I did

not-

Mr. Jouett (interrupting): That is the case you were telling Mr. Henderson about, where you were put to inconvenience—

Mr. McClelland (interrupting): No; the shipper of the malt sprouts. I could have used the malt sprouts at a price.

Mr. Jouett: Whom do you mean by the shipper?

The original owner who shipped them here?

Mr. McClelland: Yes, sir.

Mr. Jouett: But he did not ship them to you?

Mr. McClelland: No, sir.

Mr. Jouett: He shipped them to somebody else; at any rate, they got on the Tennessee Central tracks?

Mr. McClelland: They were consigned to his broker

here.

Mr. Jouett: They were consigned to a broker here and landed in the Tennessee Central yards. Now, as a separate transaction, what he wanted you to do was to sell you those sprouts here in Nashville and have these railroads bring them across the city without any transportation charge?

Mr. McClelland: Yes, sir.

Mr. Jouett: That is right, is it not?

Mr. McClelland: Yes. sir.

Mr. Jouett: How long have you been in this business, Mr. McClelland?

Mr. McClelland: 8 years.

Mr. Jouett: And how many cars do you handle in and out during a year?

Mr. McClelland: About 1,500, I guess.

Mr. Jouett: 1,500 a year?

Mr. McClelland: Well, close to it, yes.

Mr. Jouett: Well, your service is entirely satisfactory, the Louisville & Nashville and Nashville, Chattanooga & St. Louis, I guess, is it?

Mr. McClelland: Yes, sir.

Mr. Jouett: Now, out of that 12,000 cars—Mr. McClelland (interrupting): No; 1,200.

Mr. Jouett: 1,200 I mean—did not you say 1,500 a year?

Mr. McClelland: Between 12 and 15 hundred a year. Mr. Jouett: Well, in eight years how much would that make?

Mr. McClelland: Oh; I thought you meant 12,000 a

year. Yes, 12,000 cars.

Mr. Jouett: You have had no trouble?

Mr. McClelland: What? We have had no trouble?

Mr. Jouett: Yes; have you had any trouble?

Mr. McClelland: No; I guess not.

RE-DIRECT EXAMINATION.

Mr. Henderson: The reason you have not had any trouble is that you have been careful to route your business to arrive over the Louisville & Nashville and

150 Nashville, Chattanooga & St. Louis?

Mr. McClelland: Yes, and when a car comes here via the Tennessee Central I refuse it; I do not have anything to do with it.

Mr. Henderson: Now, this car that you bought of the Hermitage Elevator, that you had to have sacked and weighed, if you had bought that wheat from an elevator

on the Louisville & Nashville or the Nashville, Chattanooga & St. Louis terminals what would it have cost you to get that to your terminals on the Nashville, Chattanooga & St. Louis?

Mr. McClelland: 1 cent per hundred pounds.
Mr. Henderson: 1 cent per hundred pounds. If that was reshipped would that 1 cent a hundred be refunded to you or not?

Mr. McClelland: Yes, sir.

Mr. Henderson: Then, if you had bought it on the Louisville & Nashville or Nashville, Chattanooga & St. Louis terminals it would not have cost you anything to get it over to your rails?

Mr. McClelland: No. sir. Mr. Henderson: That is all. Mr. Jouett: That is all.

(Witness excused.) 151 Mr. Henderson: Call Mr. Sain.

F. E. SAIN was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Sain, what is your residence and occupation?

Mr. Sain: Nashville: traffic manager of the John D.

Ransom & Company.

Mr. Henderson: What is the nature of the John D. Ransom & Company's business?

Mr. Sain: Lumber business.

Mr. Henderson: Where is your principal mill and yard located?

Mr. Sain: The main yard is at Durham Street, Northeast Nashville, on the Nashville, Chattanooga & St. Louis Railroad.

Mr. Henderson: Do you have the service of three of the railroads into your yard?

Mr. Sain: Yes, sir.

Mr. Henderson: Have you any other yard in any 152 other part of the town where you have the service of only one?

Mr. Sain: Yes, sir; at West Nashville; at West Nashville yards we have only the Nashville terminals of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central, the Nashville, Chattanooga & St. Louis and the Louisville & Nashville governing the switching of lumber at Nashville?

Mr. Sain: Yos, sir.

Mr. Henderson: Have these rules at any time caused you any loss of business or loss of profit or otherwise inconvenienced you in the conduct of your business?

Mr. Sain: They have inconvenienced us slightly.

Mr. Henderson: Now in just what respect?

Mr. Sain: Well, we had to build a box chute to our factory to get over the Tennessee Central in order to eliminate the 3 cents per hundred switching charge or terminal charge in order to make Illinois Central delivery on consignments to Louisville, Kentucky.

Mr. Henderson: Now, was that necessary for the reason that the Louisville & Nashville will not switch to the Tennessee Central here except at a rate of 8 cents,

and the further fact that in Louisville the Louisville & Nashville and Illinois Central will not switch for each other there?

Mr. Sain: Yes, sir.

Mr. Henderson: The only way you could get Illinois Central delivery in Louisville was to build this chute and go to that extra expense in getting to the Tennessee Central tracks?

Mr. Sain: That is right, yes, sir.

Mr. Henderson: Now, you know the approximate distance of Baxter Heights to your main yard?

Mr. Sain: It is about a mile.

Mr. Henderson: That is, via the Tennessee Central, is it?

Mr. Sain: Yes, sir.

Mr. Henderson: Is your yard nearer to Baxter Heights than the Hermitage Elevator is to Baxter Heights?

Mr. Sain: Yes, sir; it is about-I should say about

three-quarters of a mile nearer.

Mr. Henderson: Do you know any reason why the Tennessee Central should charge you 3 cents per hundred pounds on competitive traffic and \$3.00 per car on non-competitive traffic to switch lumber from Baxter Heights to your main yard?

Mr. Sain: No. sir.

Mr. Henderson: And switch non-competitive as well as competitive grain to the Hermitage Elevator at the rate of \$2.00 a car?

Mr. Sain: No, sir.

Mr. Henderson: Has it ever happened in your business that a shortage of cars would occur on one line on which you are located and the other line had a surplus

of cars which you were prevented from using on account

of the switching rules?

Mr. Sain: We have never had much trouble on our main plant, but at West Nashville we have at times had a little trouble on account of our West Nashville plants being located on the Nashville Terminals only. We have been able to secure cars from the Tennessee Central when we could not get them from the Nashville, Chattanooga & St. Louis or the Louisville & Nashville.

Mr. Henderson: So far as your West Nashville yard

is concerned, then, that has happened?

Mr. Sain: Yes, sir.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Sain, you say that you suffered slight inconvenience?

Mr. Sain: Yes, sir.

Mr. Jouett: Now, are you referring to the industry that is served by all of the railroads or to that served only by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis?

Mr. Sain: Just to our plant at West Nashville.
Mr. Jouett: You are speaking then only of your plant at West Nashville?

Mr. Sain: Yes, sir.

Mr. Jouett: Now, Mr. Henderson asked you if you could imagine any reason why the Tennessee Central should be willing to switch your non-competitive business at \$3.00 a car, and yet upon competitive business would charge you 3 cents per hundred pounds—

Mr. Henderson (interrupting): That is not the ques-

tion.

Mr. Sain: That is not the question.

Mr. Jouett: What was the question, Mr. Henderson?

I misunderstood you. Will you repeat that question?

Mr. Henderson: Suppose you read the question, Mr.

Reporter.

(Question read by the Reporter.)

Mr. Jouett: Well, I did not catch the question. We do not know what the conditions are with reference to those grain shipments to the Hermitage Elevator?

Mr. Sain: No, sir; the only thing I know is that we are nearer than the Hermitage Elevator, we are nearer to Baxter Heights than the Hermitage Elevator, and I see no reason why they should not

switch our cars on the same basis.

Mr. Jouett: Now, tell the Commissioner what switching movement you referred to when you spoke of switch-

ing your cars by the Tennessee Central. Your industry. if I understand it, is located on the Louisville & Nashville?

Mr. Sain: Louisville & Nashville and Nashville,

Chattanooga & St. Louis.

Mr. Jonett: Louisville & Nashville and Nashville, Chattanooga & St. Louis?

Mr. Sain: Yes, sir.

Mr. Jouett: You understand that those two roads have each full trackage rights over all of their joint lines, do vou not?

Mr. Sain: Yes. sir.

Mr. Jouett: Very well; now, assuming your industry to be located there, what is the movement that you referred to of the Tennessee Central as to which they charge you \$3.00—

Mr. Henderson (interrupting): Pardon me one moment; I think you misunderstood him; he has tracks of

all three lines into his yard.

Mr. Jouett: Yes, sir.

Mr. Henderson: Tennessee Central, Louisville & Nashville and Nashville, Chattanooga & St. 157 Louis.

Mr. Jouett: Yes, sir.

Mr. Henderson: And the switch movement was from Baxter Heights via the Tennessee Central.

Mr. Jouett: I thought he was talking about the other plant. Were you not talking about the other plant? Mr. Sain: I was talking about the main plant.

Mr. Jouett: You are talking about the main plant?

Yes, sir. Mr. Sain:

Mr. Jouett: Where you are served by all three lines? Where we are served by all three lines. Mr. Sain:

Mr. Jouett: Now, what is the switching where you refer to \$3.00?

Mr. Sain: They did charge us 3 cents per hundred pounds for switching service.

Mr. Jouett: For what service? Switching cars from

where to where?

Mr. Sain: Switching cars from Baxter Heights down to our factory, our box factory.

Mr. Jouett: That is, where a car would come in over the Tennessee Central?

Mr. Sain: Yes, sir.

Mr. Jouett: And was coming to your plant on the Nashville, Chattanooga & St. Louis? 158

Mr. Sain: Yes, sir; that is correct.

Mr. Jouett: And the Tennessee Central would charge \$3.00 to bring it to you?

Mr. Sain: No, sir; the Nashville Terminal Company

would charge \$3.00 a car for placing that car.

Mr. Jouett: You said a while ago the Tennessee Central was charging that.

Mr. Sain: I was just mistaken.

Mr. Jouett: That is what I want to get straightened out. The Nashville, Chattanooga & St. Louis, then, you say, charges you \$3.00 for bringing that car from the point of interchange-

Mr. Sain: Three cents per hundred pounds. They charge us three cents per hundred pounds. They did charge us; they do not charge us now, because we just

built this chute to the Tennessee Central.

Mr. Jouett: From what point do they charge you

that three cents per hundred pounds?

Mr. Sain: They charge us for placing that carswitching that car from Baxter Heights on the Nashville, Chattanooga & St. Louis down to our plant on the Nashville Terminals and hauling that car back to Baxter Heights.

159 Mr. Jouett: That is, where it was a competitive shipment coming over the Tennessee Central instead of the Nashville, Chattanooga & St. Louis, where your plant is located.

Mr. Sain: That was a shipment, as I stated, going

to Louisville for Illinois Central delivery.

Mr. Jouett: I see; that is what you call a competitive shipment, is it not? Could the Nashville, Chattanooga & St. Louis have transported it on the line haul?

Mr. Sain: They could not have made this delivery. The Louisville & Nashville could have carried the shipment to Louisville, but they could not have made this delivery there.

Mr. Jouett: I do not know whether the Commissioner understands it, but I can not get that straight in my head. It is clear to the Commissioner?

Commissioner Meyer: I thought I understood what the witness wanted to say. Perhaps I did not get it.

Mr. Jouett: The witness has confused the Tennessee Central main line with the L., H. & St. L.; at least it seems that way to my mind.

Let me give you an illustration: the L., H. & St. L.,

without regard to that particular shipment-

Mr. Sain (interrupting): You mean the Nashville, Chattanooga & St. Louis?

160 Mr. Jouett: I mean the Nashville, Chattanooga & St. Louis, will not switch to an industry on its line, such as yours, a shipment that comes over the Tennessee Central at all, it being competitive business; that is, will not switch it for the switching charge of \$3.00, for the reason that it is deprived of its long haul, it is deprived of the right to carry it over the transportation haul. Do you not know that that is the reason, if it comes from a point that the Nashville, Chattanooga & St. Louis do not reach, so that the Nashville, Chattanooga & St. Louis could not haul it, it does switch it to you at \$3.00 a car? Is not that right?

Mr. Sain: No, sir; they charge 3 cents per hundred

pounds.

Mr. Jouett: Tell me any place that you have heard of where a shipment came into Nashville-now think carefully on that-

Mr. Sain (interrupting): That is outbound?

Mr. Jouett: Tell me any place where a shipment coming into Nashville from a non-competitive pointthat is, a point that the Nashville, Chattanooga & St. Louis itself does not reach—where they charged you any

more than \$3.00 to switch that from the point of interchange with the Tennessee Central to your 161

plant, if that ever occurred?

Mr. Sain: I do not think that ever occurred, no, sir. Mr. Jouett: Well, that was my question. That is all.

Commissioner Meyer: Well, if the question that you asked before, I assumed that the witness objected to paying 3 cents per hundred pounds for having that car moved, but he says that they are not objecting to it any more, because they have constructed this chute; is that right?

Mr. Sain: Yes, sir.

Mr. Jouett: Yes, but he was not then referring, or could not have been referring to a non-competitive ship-

ment. I wanted to get that clear.

Commissioner Meyer: Go right on in your own way. Mr. Jouett: The 3-cent arrangement never did apply to a non-competitive shipment, did it? That is what I ask you again; was there ever a non-competitive shipment coming to your plant from the Tennessee Central, to your plant on the Nashville, Chattanooga & St. Louis, that they undertook to charge you 3 cents per hundred pounds, or anything except \$3.00 a car, and if so tell of any such shipments.

Mr. Sain: I guess not. I do not quite understand

162 the question.

Mr. Henderson: Pardon me; the tariff speaks for itself.

Mr. Jouett: I have no desire to confuse the witness, but he has made the impression in the record, and I am sure unintentionally, that they charge 3 cents per hundred pounds for switching non-competitive freight coming over the Tennessee Central to his yard.

Mr. Henderson: I do not understand it that way; the tariff speaks for itself. \$3.00 is all that is being charged

on non-competitive shipments.

Mr. Sain: That is competitive business.

Mr. Jouett: Now, if I am right, we are straightened out.

Mr. Sain: You are right; yes, sir.

Mr. Jouett: Now, as to competitive business, I will ask you now, getting back to Mr. Henderson's question, do you think that a railroad situated as the Nashville, Chattanooga & St. Louis, is, in the case of competitive shipments which it could have hauled into Nashville and delivered at your industry, that it loses that transportation haul, that revenue haul, and it is brought in over the Tennessee Central, that it ought to be required to lose that haul and enable the Tennessee Central to deliver

it to you at the fair price of \$3.00?

163 Mr. Sain: Yes, sir.

Mr. Jouett: Do you think that is fair? Mr. Sain: Yes, sir; I think that is fair.

Mr. Jouett: Then, if they charge, in the case of competitive shipments, if they charge you the regular rate of 3 cents per hundred pounds, the lowest local rate-

Mr. Sain: Yes, sir.

Mr. Jouett: Do you see anything unreasonable about that when you cut them out of the transportation haul?

Mr. Sain: Well, the question asked was if it has caused us any inconvenience; I say it has caused us inconvenience.

Mr. Jouett: Yes; I see that, but I am asking you about the injustice of it.

Mr. Sain: I do not know anything about the reasonableness of it.

Mr. Jouett: Now, that chute; how much did that cost you to make that chute?

Mr. Sain: I should judge about \$400.00 or \$500.00. Mr. Jouett: How many cars do you handle in a year?

Mr. Sain: How many cars do we handle in a year?

Mr. Jouett: Yes.

Mr. Sain: In and outbound?

164 Mr. Jouett: Yes.

Mr. Sain: We handle about 2,000 cars.

Mr. Jouett: About 2,000 cars a year?

Mr. Sain: Yes, sir.

Mr. Jouett: How long have you been familiar with the business, or been connected with it?

Mr. Sain: I have been in the traffic department about

seven years.

Mr. Jouett: That is all.

Commissioner Meyer: Is that all, Mr. Henderson?

Mr. Henderson: That is all.

(Witness excused.)

Mr. Henderson: I will call Mr. Allen.

S. M. Allen was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Allen, what is your residence and occupation?

Mr. Allen: Nashville; grain business.

Mr. Henderson: What grain concern are you connected with?

Mr. Allen: Neil & Shofner Grain Company. Mr. Henderson: What is your position?

Mr. Allen: Manager.

Mr. Henderson: You say you are manager of the Neil & Shofner Grain Company?

Mr. Allen: Yes, sir.

Mr. Henderson: How long have you been in the grain business in Nashville and on what terminal tracks has your warehouse or elevator been located during that time?

Mr. Allen: I have been in it about seven or eight years, located in South Nashville on the Nashville, Chattanooga & St. Louis and Louisville & Nashville Railroads.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central, the Nashville, Chattanooga & St. Louis and the Louisville & Nashville

166 governing the switching of grain at Nashville?

Mr. Allen: Yes, sir.

Mr. Henderson: Have these rules at any time caused you any loss of business or loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Allen: Yes, sir.

Mr. Henderson: In what respect?

Mr. Allen: We receive a good many cars of corn here, corn with the shucks on, and there is not always a

quick sale for this corn, consequently, it has to be sent to some sheller to be shelled. The only shellers at the present time at Nashville are located on the Tennessee Central Railroad, and this corn comes from Kentucky points, and in order to get it to the Tennessee Central shellers why, we have it switched to Baxter Heights, which is done free by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, but the Tennessee Central charges 21/2 cents per hundred pounds to carry it into the Hermitage Elevator, and then when it comes out the Tennessee Central charges 21/2 cents per hundred to get it back to Baxter Heights, and the Nashville, Chattanooga & St. Louis again charge us 21/2 cents per hun-

dred to get it back to our warehouse on the Nash-167 ville, Chattanooga & St. Louis or the Louisville & Nashville terminals. That is my understanding of the tariff. That is one instance where it causes us a big

expense.

Mr. Henderson: Now, does that 21/2-cent charge ap-

ply to McLemore-Crutcher's sheller?

Mr. Allen: No, sir; that is what I was coming to. That is another sheller, the same kind of a sheller, that shells corn with the shuck on, located on the Tennessee Central. Now, under the present rules we could send a car of ear corn with the shuck on to the Hermitage Elevator at \$2.00 a car, and on presentation of the inbound expense bills, the Nashville, Chattanooga & St. Louis or the Louisville & Nashville will absorb that \$2.00 switching charge.

On the other hand, if the Hermitage Elevator is not in condition to shell corn, if it is being pushed, or it is not able to do it, the sheller is broken down, we could not send that same corn to the McLemore-Crutcher sheller under a charge of 21/2 cents per hundred, which

makes it prohibitive to send it there.

Now, Mr. Lemore-Crutcher are not only wholesalers. but retail dealers, and if we send our corn over to be shelled, there are times that they would be able to

pay us a cent or cent and a quarter a bushel premium, more than the people at the Hermitage Elevator could pay us, on account of them being retailers and their needing the corn to give out to their trade for immediate delivery.

Then, here is another instance—there is where it inconveniences us and also costs us money on account of not being able to have the same arrangement with the McLemore-Crutcher sheller as with the Hermitage Elevator Company.

Now, early in the shelling season we got in two or three cars of corn from Hickman, Kentucky. At the time, we ordered that corn over to the Hermitage Elevator to be shelled. The railroad did not consider that a competitive point, and we took it over there, as I thought, for \$3.00 a car switching, but after the corn went into that elevator and we wanted to bring it back over to our elevator, in order to manipulate it, to handle it with our grain, in order to get it on grade, why, they would not let it come out of the Hermitage Elevator to Baxter Heights under a rate of 2½ cents, and then there would have been another 2½ cents from Baxter Heights to our elevator, which is located on the Nashville, Chattanooga & St. Louis and Louisville & Nashville terminals.

A few months ago we got in two cars of ear corn over the Nashville, Chattanooga & St. Louis road, expecting to sell this corn in the city. We can usually sell it to better advantage on the Nashville, Chattanooga & St. Louis or Louisville & Nashville than we can on the Tennessee Central, because the terminals of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis reach more feeders of corn with the shuck on than the Tennessee Central, or rather our customers, and on account of there being no demand for this ear corn at that particular time we would have had to hold it on track at a large storage cost, and we had to send it to the Hermitage Elevator.

Now, we could not send that corn to the Hermitage Elevator under a charge of $2\frac{1}{2}$ cents from Baxter Heights to the Hermitage Elevator, and in order to get it back there would have been another $2\frac{1}{2}$ cents to Baxter Heights and from Baxter Heights back to our elevator another $2\frac{1}{2}$ cents, and so we had to sacrifice that corn on the Nashville, Chattanooga & St. Louis or Louisville & Nashville—it happened to be on the Nashville, Chattanooga & St. Louis—at about 2 cents under the market in order to keep from paying no telling how

much demurrage and storage charge.

Elevator to be shelled. We sold that corn to the Harsh Grain Company, located in South Nashville on the Nashville, Chattanooga & St. Louis and Louisville & Nashville tracks, and handled it in this manner in order to avoid this 2½-cent charge: we switched it by terminal movement through the Hermitage Elevator to J. W. Kerr's warehouse, which is located both on the Tennessee Central and the Louisville & Nashville Railroads, paid a transfer charge of 1 cent per bag to J. W. Kerr to roll

that corn from the Tennessee Central car across his warehouse floor, perhaps 50 feet, into a Nashville, Chattanooga & St. Louis car, then paid a switching charge of 1 cent per hundred from J. W. Kerr's warehouse to the Harsh Grain Company. This latter charge can be gotten back by filing a claim for switching, showing the outbound tonnage south, and so can the Tennessee Central switching charge of \$3.00 be gotten back by filing a switching claim showing the outbound tonnage south.

Mr. Henderson: Now, this grain that goes to Mc-Lemore & Crutcher's sheller, are the charges into the

sheller and out absorbed at all by any of the lines?

Mr. Allen: No, sir; because it goes from Baxter Heights to the McLemore-Crutcher sheller.

Mr. Henderson: None of that charge is absorbed by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis?

Mr. Allen: No, sir; not like it is to the Hermitage. Mr. Hermitage: That is all

CROSS-EXAMINATION.

Mr. Jouett: Summing it all up, is it not a fact the substance of what you say is that these roads which transport the grain from their respective places, one to the other, that is, carries it from the Nashville, Chattanooga & St. Louis tracks over to the point on the Tennessee Central, or the Tennessee Central point over to it? Is not what you have been talking about altogether intracity movements and not part of the transportation haul?

Mr. Allen: Well, it comes in here from different cities.

Mr. Jouett: But it comes consigned to you, does it not?

Mr. Allen: Comes consigned to us?

Mr. Jouett: Yes.

Mr. Allen: Sometimes to us, sometimes to the shipper.

Mr. Jouett: Now, let us take the times when it is consigned to you. It comes to you, consigned to you, from out of the city?

Mr. Allen: Yes, sir.

Mr. Jouett: Your place is on the Nashville, Chatta-nooga & St. Louis?

Mr. Allen: Yes, sir.

Mr. Jouett: What you want is, after you have gotten that corn, after the railroad which performs the transportation service has finished it, then you want these

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roads to handle it inside of the city, from one point in the city to another point in the city, without any further transportation to it except that transportation, and you want that at a switching charge, is not that right?

Mr. Allen: Well, it does not come to our warehouse.

you understand, in the city.

Mr. Jouett: It doesn't make any difference, it comes to the team tracks or the depot or your tracks, either one, if you have ordered it to Nashville, and it comes in and the transportation service is ended you want that car handled across the city, is not that the substance of it?

Mr. Allen: At a nominal switching charge. Mr. Jouett: Yes, at a switching charge.

173 Mr. Allen: Yes, the same as I want it handled to the McLemore-Crutcher sheller on the same basis as we can get it handled on the Hermitage Elevator, for the reason that it is sometimes not convenient for the sheller at the Hermitage to shell this corn, and when that is the case we are left on hand with a lot of ear corn.

Mr. Jouett: That is because the Tennessee Central does not choose to put in the switching charge from some other sheller that it has in to the Hermitage Elevator?

Mr. Allen: This switching charge might be absorbed by the Tennessee Central, but we do not see the Tennessee Central or the Louisville & Nashville or the Nashville, Chattanooga & St. Louis absorbing switching charges so far as we are concerned on the inbound expense bill. They might give it back to the Tennessee Central.

Mr. Jouett: But you know that the Louisville & Nashville and the Nashville, Chattanooga & St. Louis would gladly absorb the switching charge to or from any

elevator, or any point-

Mr. Allen (interrupting): No, sir; they won't do it

from the McLemore-Crutcher sheller.

Mr. Jouett: Can you name a single one where the Tennessee Central will deliver at the interchange point where the Louisville & Nashville will

not absorb it; name one.

Mr. Allen: Here is what I mean: that the Nashville, Chattanooga & St. Louis and the Louisville & Nashville will not deliver a car to the McLemore-Crutcher sheller and then give me back that \$2.00 like they will when I send it to the Hermitage Elevator, when both elevators are the same.

Mr. Jouett: Don't you know that they can not do it? Mr. Allen: They are doing it; they say they do. Mr. Jouett: They deliver to McLemore-Crutcher? Mr. Allen: The Tennessee Central deliver to Baxter Heights the same as they do at the Hermitage; the Nashville, Chattanooga & St. Louis do not deliver either to the Hermitage or McLemore-Crutcher.

Mr. Jouett: Don't you know that the Tennessee Central when it gets to Baxter Heights won't handle it to the other elevator like it handles it to the Hermitage?

Mr. Allen: That is what I am thinking about; they

won't do it.

Mr. Jouett: That is not the Louisville & Nashville's fault.

Mr. Allen: I don't know whose fault it is, but the Louisville & Nashville returns the Tennessee Central charge.

Mr. Jouett: Won't the Louisville & Nashville gladly

absorb the Tennessee Central charge?

Mr. Allen: They will to the Hermitage but not to

the McLemore-Crutcher.

Mr. Jouett: Don't you know as a matter of fact it is commonly known in Louisville that the Tennessee Central does not have that switching service to the other elevator?

Mr. Allen: It does have it, or I don't see why it

should not have it.

Mr. Jouett: I don't know why they don't have it; I am not working that out.

Mr. Allen: I can get it, sure, if I pay 2½ cents a hundred.

Mr. Jouett: Who do you pay the 21/2 cents to?

Mr. Allen: The Tennessee Central.

Mr. Jouett: That is what I say; don't you know the Tennessee Central does not have a \$2.00 switching charge to certain locations whereas they do have it to certain others?

Mr. Allen: That is what I am complaining of, the

discrimination; that is what we want eliminated.

Mr. Jouett: You are not complaining of the Louisville & Nashville in that respect?

Mr. Allen: We look to the Louisville & Nashville

176 for a refund of our \$2.00.

Mr. Jouett: Well, if the other man won't switch it over for less than 2½ cents we can not give it to you.

Mr. Allen: I want the Louisville & Nashville to get the Tennessee Central to do the same thing to the Mc-Lemore-Crutcher Elevator that they do for the Hermitage.

Mr. Jouett: How can the Louisville & Nashville get

the Tennessee Central?

Mr. Allen: I do not know how they get it to the Her-

mitage. I do not know anything about the rates.

Mr. Jouett: Then, there is no complaint so far as you are concerned with the Louisville & Nashville or the Nashville, Chattanooga & St. Louis with reference to that transaction; they simply will absorb the \$2.00 switching charge that the Tennessee Central charges for the shipments between the Hermitage Elevator and the point of interchange, but they will not absorb a 2½-cent rate that the Tennessee Central charges to other places, is that right?

Mr. Allen: That is true; that is what I tried to ex-

plain.

Mr. Jouett: Now, you do not know what the conditions are under which the Tennessee Central sees fit to

do that service from the Hermitage Elevator on its line to the point of interchange for \$2.00 and will 177 not do a service from some other elevator to the point of interchange?

Mr. Allen: No, sir; I do not see why they should

do it.

Mr. Jouett: I don't either; I don't know about that. We will absorb any switching charge they will charge. Now, that transaction with reference to the corn that came from Hickman.

Mr. Allen: Yes, sir.

Mr. Jouett: That was not a transportation charge, it was-I believe we have already discussed that-that was the handling of a car after it had reached Nashville and after it had reached you, or after reaching destination.

Mr. Allen: Yes, they put it in saying it was not competitive until we wanted to get it out, and then they changed their mind and said we would have to pay 21/2 cents to get it out.

Mr. Jouett: Well, let us explain that.

Mr. Allen: I can not explain it.

Mr. Jouett: You have explained your end of it; you say they put it in because they said it was non-competitive, and then would not let you get it out?

Mr. Allen: Yes, sir; that is what the proposition

was.

Mr. Jouett: Where was the shipment from? 178 Mr. Allen: Hickman, Kentucky.

Mr. Jouett: Where was it consigned to?

Mr. Allen: Nashville.

Mr. Jouett: Just plain Nashville?

Mr. Allen: Yes, sir; that is the way all our stuff comes.

Mr. Jouett: Was it consigned to your firm?

Mr. Allen: I think it was consigned to S. S. Kerr; he was at that time connected with us; we were working together.

Mr. Jouett: Your company is on the Nashville,

Chattanooga & St. Louis?

Mr. Allen: And on the Louisville & Nashville, yes.

Mr. Jouett: On the Louisville & Nashville?

Mr. Allen: Both.

Mr. Jouett: And that car came to Nashville and was delivered, or ready to be delivered to you at your place of business, was it not?

Mr. Allen: Yes, sir; subject to our order.

Mr. Jouett: Was not that transportation service completed, and is it not a fact that what you now refer to was a through service that you asked the railroad to do, namely; transport it from the point where it was in Nashville to another point in Nashville over on the Ten-

nessee Central, as a separate and later, new and

179 distinct service?

Mr. Allen: It was, but it looks to me like it was no more separate or distinct than to send it to the Hermitage Elevator on a \$2.00 charge and give us back \$2.00. That is another separate and distinct movement.

Mr. Jouett: If it had been transported, do you mean to say they will carry—listen to me carefully, now, and

answer this-

Mr. Allen (interrupting): Yes, sir.

Mr. Jouett: Do you mean to say that the Louisville & Nashville will carry the grain to the Hermitage Elevator?

Mr. Allen: They will not, but the Tennessee Central

does from Baxter Heights.

Mr. Jouett: Well, on grain that is over in Nashville, over on your side?

Mr. Allen: Yes, sir.

Mr. Jouett: Has stopped its transportation haul and is there ready for a new service, that the Louisville & Nashville will take that up to the point of interchange and give it to the Tennessee Central?

Mr. Allen: Yes, sir; you understand we are entitled to one free movement until we order the car—the car

comes into the storage yard subject to our order, 180 and we are then entitled to order the car anywhere on the Nashville, Chattanooga & St. Louis or the Louisville & Nashville terminals, we see fit. We could order it to Baxter Heights, or back out clear to Vine Street. That is done free of charge. But then when that has gone into the Hermitage Elevator the Tennessee Central charges \$2.00 a car and when we get that original expense bill and present it to the Nashville, Chattanooga & St. Louis or the Louisville & Nashville they will refund the \$2.00.

Mr. Jouett: In other words, the Louisville & Nashville, in order to get the transportation haul into Nashville here says to you, when it is switched by the Tennessee Central over the Hermitage Elevator, "We will refund the \$2.00."

Mr. Allen: Yes, but they won't do it for McLemore-Crutcher.

Mr. Jouett: Didn't you just say the Tennessee Central would not do it for McLemore-Crutcher for \$2.00 and the Louisville & Nashville won't absorb any more and won't absorb the big charge?

Mr. Allen: Well, we look to the Louisville & Nashville for the refund of the \$2.00; that is where we look.

Mr. Jouett: And they are always glad to do it? Mr. Allen: To the Hermitage Elevator.

Mr. Jouett: Certainly, and don't you know they 181 would do it and have said in this answer that they will absorb the switching charge on competitive business anywhere the Tennessee Central will take it?

Mr. Allen: It looks like the fault of the Tennessee Central; I don't know how that is, but I say there is discrimination there between the Hermitage Elevator and McLemore-Crutcher.

Mr. Jouett: That is a question I am not familiar with, as to whether the Tennessee Central is discriminating.

Mr. Allen: That is where it inconveniences us; we have to send corn direct from point of origin to destination and leave Nashville out of it on that kind of a rate.

Mr. Jouett: That is all.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Allen, is it true that the Louisville & Nashville and Nashville, Chattanooga & St. Louis absorb \$2.00 or anything else on business to McLemore-Crutcher?

Mr. Allen: No, sir.

Mr. Henderson: They won't absorb \$2.00 or any amount?

Mr. Allen: No, sir.

182 Mr. Henderson: The fact that they are willing to do it does not relieve you of paying it?

Mr. Allen: We can not handle it on that ground. Mr. Henderson: That is all. (Witness excused.)

Brown Buford was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Buford, what is your residence and occupation?

Mr. Buford: Nashville; wholesale hardware dealer. Mr. Henderson: How long have you been in the hardware business in Nashville and on what terminal tracks has your warehouse been located during that time?

Mr. Buford: More than 30 years. On the tracks of the Tennessee Central Railroad since they were built.

Mr. Henderson: Are you familiar with the present rules of the Tennessee Central and Nashville, Chattanooga & St. Louis and the Louisville & Nashville governing the switching of articles handled by you at Nashville?

Mr. Buford: Yes, sir.

Mr. Henderson: Have these rules at any time caused you loss of business or loss of money or otherwise inconvenienced you in the conduct of your business?

Mr. Buford: Yes, sir.

Mr. Henderson: In what respect?

Mr. Buford: Would you like me to answer that in detail?

Mr. Henderson: If you can, yes, sir.

Mr. Buford: From failing to deliver cars of freight that were routed to come to our warehouse by the Tennessee Central, and not giving us warehouse or sidewalk delivery.

Mr. Henderson: Now, have you any specific instance where that has occurred, and the extra amount that it has cost you to get the delivery?

Mr. Buford: Yes, sir.

Mr. Henderson: I would be glad if you would give

us those, please.

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Mr. Buford: One instance that occurs to me, Mr. Henderson, was a carload of ammunition in the year 1904, which was routed to Nashville to give us Tennessee Central delivery, whih was brought in over the Nashville.

Chattanooga & St. Louis road. That forced us to haul that car across town and lost us the transfer

charges.

Another instance was a car of metallic roofing, in 1908.

That was routed to Nashville for Illinois Central delivery. At that time the Illinois Central operated the Tennessee Central into Nashville. That car came into Nashville over the Louisville & Nashville road and was not delivered to us until 30 days after it reached Nashville. We lost the transfer on that and we were out of our goods for 30 days. Another instance was a car of ammunition routed to Nashville over the Tennessee Central. It came in over the Nashville, Chattanooga & St. Louis road and was delivered at our warehouse by wagon transfer.

Another instance was a car of bale ties, wire bale ties, which was routed for Tennessee Central delivery and came in over the Louisville & Nashville road. That

forced us to haul that across town.

Another was a car of fence, which came from some point in Iowa, Great Falls, Iowa—Rock Falls, Illinois, came in via the Nashville, Chattanooga & St. Louis road. That forced us to transport that across town by team.

Mr. Henderson: Now, does the fact that you have to haul that freight instead of getting back-door delivery damage the goods to any extent, or make it otherwise more expensive to handle it into your warehouse?

Mr. Buford: The goods were damaged and it was more expensive to handle them.

Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: How long have you been in business on the Tennessee Central?

Mr. Buford: Since it was built, sir. Mr. Jouett: How long is that?

Mr. Buford: 13 years, about, if my memory serves me correctly; I would not be positive as to that.

Mr. Jouett: And where is your store?

Mr. Buford: It is located on the tracks of the Tennessee Central Railroad, on what we know as Market Street here, Sir; Market and Front streets; the store runs from one street to the other.

Mr. Jouett: The Tennessee Central runs back of your

store?

Mr. Buford: Just so.

Mr. Jouett: In these 13 years, or whatever time you have covered, you have mentioned five instances.

186 Is it not a fact that in all of those the shipment was

made for Tennessee Central delivery and routed for Tennessee Central delivery Mr. Buford: If they were not all made for Tennessee Central Railroad delivery?

Mr. Jouett: Sir?

Mr. Buford: You ask me if they were not all made for Tennessee Central Railroad delivery?

Mr. Jouett: Yes. Mr. Buford: Yes.

Mr. Jouett: Why did you pay the cost of that drayage?

Mr. Buford: We could not get them any other way.
Mr. Jouett: Don't you know the railroads were responsible to you for that, or did you know that?

Mr. Buford: We did not know it.
Mr. Jouett: You did not know?

Mr. Buford: No.

Mr. Jouett: You just paid it? Mr. Buford: We did what?

Mr. Jouett: I say, you just paid it yourself?

Mr. Buford: We paid it.

Mr. Jouett: Did you make any claim against them for it?

187 Mr. Buford: We did.

Mr. Jouett: And were the claims rejected in each instance?

Mr. Buford: In more than one instance they were paid.

Mr. Jouett: What?

Mr. Buford: In more than one instance they were paid, after so long a time.

Mr. Jouett: Oh, they were paid? Mr. Buford: They were paid.

Mr. Jouett: You did not lose any money then?

Mr. Buford: We did. Mr. Jouett: When?

Mr. Buford: The first instance I mentioned.

Mr. Jouett: Did you say that was routed via the Tennessee Central?

Mr. Buford: Yes, sir.

Mr. Jouett: And yet you had to pay the drayage?

Mr. Buford: We did pay it, yes.

Mr. Jouett: Did you pay it or did you charge it to the house that shipped it to you?

Mr. Buford: We paid it and lost it.

Mr. Jouett: Now, what explanation was made by the railroad company for not promptly paying you back that drayage when they had misrouted the goods?

Mr. Buford: They refused to do it.

Mr. Jouett: Did you show to them that it was routed via the Tennessee Central?

Mr. Buford: As clearly as it could be done.

Mr. Jouett: Sir?

Mr. Buford: As clearly as it could be done.

Mr. Jouett: Then, in the 13 years, in only one instance did you have to pay for this drayage?

Mr. Buford: No, there was another.

Mr. Jouett: When was that?

Mr. Buford: On the car of ammunition.

Mr. Jouett: How long ago? Mr. Buford: I am not clear on the date, Sir. I think it was in 1908; I do not define that though.

Mr. Jouett: Five or six years ago? Mr. Buford: More than that even.

Mr. Jouett: More than that?

Mr. Buford: Yes, sir.

Mr. Jouett: Now, as to that, do you recall that that was routed for Tennessee Central delivery?

Mr. Buford: I do; it was routed for Tennessee

189 Central delivery.

Mr. Jouett: And was any excuse given for not paying you that claim when the railroad had made the mistake and under the law it had to pay it?

Mr. Buford: None that I recall, Sir. Mr. Jouett: Did you file a claim?

Mr. Buford: We did.

Mr. Jouett: With whom did you file that claim?

Mr. Buford: I think Mr. Talliefiero was the agent at that time, if I am not mistaken; I am not clear on that though.

Mr. Jouett: Would it not be possible after this lapse of five years that you misremember about that bill showing routing via the Tennessee Central?

Mr. Buford: It is not possible; I am accustomed to

do that routing myself.

Mr. Jouett: What I mean is did it appear on that bill of lading that the instruction-

Mr. Buford (interrupting): It did, yes, sir.

Mr. Jouett: So in those two instances then in this period of time you have had to pay the cost of drayage and you did not take that to the court or attempt to 190 assert it in any way?

Mr. Buford: No. sir; not to the court.

Mr. Jouett: They undoubtedly owe you for those two shipments.

Mr. Buford: I will be thankful if you will pay it.

Mr. Jouett: It ought to be paid.

Commissioner Meyer: You still have your former claim papers?

Mr. Buford: I don't think so; I think they have been

destroyed.

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Mr. Jouett: I don't think there is any road that would hesitate a minute to pay it.

RE-DIRECT EXAMINATION.

Mr. Henderson: Mr. Buford, the fact that you have not had more cases than that is due to the fact that you are careful to route your freight so as to reach Nashville over the line on which you are located?

Mr. Buford: I beg your pardon.

Mr. Henderson: The fact that you had to pay drayage in no more cases than you have mentioned is due to the fact that you are careful to route your freight to East Nashville via the Tennessee Central?

Mr. Buford: I have only mentioned these few

cases, Mr. Henderson; there are others.

Mr. Henderson: But if you did for any reason overlook the routing and the bill of lading did not carry Tennessee Central routing and the shipment reached Nashville via either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, you would have to pay these competitive switching rates or dray yourself?

Mr. Buford: Yes, sir.

Mr. Henderson: That is all.

(Witness excused.)

T. A. Washington was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Washington, what is your residence and occupation?

Mr. Washington: I live in Nashville; in the lumber

business.

Mr. Henderson: What is the name of your firm? Mr. Washington: Washington & Smith. 192

Mr. Henderson: You are a member of the firm? Mr. Washington: Yes, sir. Mr. Henderson: Where is your lumber yard located and how long have you been at that present location?

Mr. Washington: We are on South Fifth Street in East Nashville, and we have been there I think about five years at that location, four or five years.

Mr. Henderson: That is in East Nashville on the

Louisville & Nashville terminals?

Mr. Washington: Yes, sir.

Mr. Henderson: Are you familiar with the rules of the Tennessee Central, the Nashville, Chattanooga & St. Louis and the Louisville & Nashville governing the switching of lumber at Nashville?

Mr. Washington: To some extent.

Mr. Henderson: Have you had any occasion to have to pay competitive switching on any lumber or to have it

drayed in order to effect delivery in your yard?

Mr. Washington: We have had to have some cars drayed: it would be cheaper than 3 cents a hundred switching charge to us. The most recent case we had the

railroad blamed the customer. The bill of lading called for Louisville & Nashville delivery, and we 193 finally got the railroads to settle it among themselves and give us Louisville & Nashville delivery. In fact, we refused the car until they did give us Louisville

& Nashville delivery.

Mr. Henderson: You were put to that trouble and delayed, though, while they were settling this controversy between themselves?

Mr. Washington: Yes, sir. Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Mr. Washington, how long have you been in business here?

Mr. Washington: In our present location I think

about five years.

Mr. Jouett: And under the rules if the car comes from a competitive point it is not switched at the switching charge of \$3.00 and if it comes from a non-competitive point it is?

Mr. Washington: If one happens to come in where that 3-cent switching charge applies we just have to haul

it over. It is cheaper than paying the switching. Mr. Jouett: That is only in case of misrouting? 194

Mr. Washington: Well, it can happen in several Sometimes a man south will just ship us in a car without giving us notice he is doing it, and not route it; it happens that way. The most recent case I recollect was the railroad people got it wrong themselves; the bill of lading specified the correct delivery and they mixed it up themselves.

Mr. Jouett: Well, generally, whenever the railroad makes a mistake, they pay for it, they make the delivery

or they pay you whatever the drayage costs?

Mr. Washington: In all the cases we had we refused to accept the car until they gave us Louisville & Nashville delivery.

Mr. Jouett: All that I understand you to say is that in the few cases where that has occurred you would rather dray it than pay 3 cents per hundred?

Mr. Washington: It is cheaper.

Mr. Jouett: Yes; now, with reference to that 3-cent local rate, is that a rate, which the Nashville, Chattanooga & St. Louis at one time had in when Baxter Heights was treated as a local station; do you remember that fact?

Mr. Washington: I could not tell you, Sir; I never knew those details.

Mr. Jouett: That is all. (Witness excused.)

CHARLES T. MARTIN was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: Mr. Martin, what is your residence

and occupation?

Mr. Martin: I am general manager of the firm Spurlock-Neal Company, wholesale druggists, on Second Avenue and First Avenue.

Mr. Henderson: How long have you been located at your present place of business, and on what terminal

tracks are you located?

Mr. Martin: Since 1904 I have been at that location, and I think at that time, even, the Tennessee Central tracks ran right back of my house; certainly very shortly after that year.

Mr. Henderson: Has it ever happened in your business that you were forced to pay these competitive switching rates or dray freight across town?

Mr. Martin: I remember two instances, one case especially, was in the matter of red oxide of iron, which I buy in carload lots. Another was a proprietary medicine, which at that time I bought in carload lots, and both of which were ordered to be shipped via the Tennessee Central in order that I might get the advantage of delivery in my place of business. It so happened that both of these articles, on both of them, the manufacturers make a delivered price f. o. b. Nashville. I have nothing to do with the freight, and therefore my routings were not respected. It would be more convenient for them, they claimed afterwards, to ship it via another route.

Mr. Henderson: In both of those cases you had to lose the cost of drayage or an extra expense of switching?

Mr. Martin: I did.

Mr. Henderson: Was that any more inconvenient or expensive handling into your warehouse than it would

have been from your back door?

Mr. Martin: Well, it is certainly more expensive; it is just that much expense. The warehouse is only 50 feet from the track and I had to pay 3 cents a hundred-weight.

197 Mr. Henderson: That is all.

CROSS-EXAMINATION.

Mr. Jouett: Your back door is on Front Street, I believe?

Mr. Martin: Not exactly, but within 50 feet of it.
Mr. Jouett: Have you an industry track right at
your place or do you have to haul from that point?

Mr. Martin: I can either truck it, or by just a onehorse wagon I can deliver it to my place of business.

Mr. Jouett: Then, you are not located upon any railroad?

Mr. Martin: I am within 50 feet of it.

Mr. Jouett: Yes, but I mean you have no private track, you have no industry track upon which we can make carload delivery to you?

Mr. Martin: I did not at that time; I have at the

present time.

Mr. Jouett: I mean at the time you are talking about.

Mr. Martin: No.

Mr. Jouett: It is merely a matter of more convenience to you to have to haul from one place than another?

Mr. Martin: Well, more so, because within 50 feet I can haul or have hauled and saved drayage, not exactly all of it, but a great portion of it. It certainly does

198 not cost me 3 cents to deliver 50 feet.

Mr. Jouett: How long have you been in business, Mr. Martin?

Mr. Martin: In that particular spot, in that location, or in the city?

Mr. Jouett: Well, where you have had railroad delivery, carload delivery?

Mr. Martin: I have at the present time carload delivery right in the warehouse.

Mr. Jouett: How long has that been?

Mr. Martin: That is just within the last 30 days.

Mr. Jouett: Prior to that?

Mr. Martin: Prior to that, since 1904, I have been within 50 feet of the tracks.

Mr. Jouett: 10 years you were within 50 feet of the track. Now prior to 1904, were you in business?

Mr. Martin: I was in the business, but fronted on Second Avenue. I mean, the establishment was on Front Street. At that time there was no railroad. I had to move from there just about that time.

Mr. Jouett: So, the only two instances that you referred to were cases where the consignor just refused to

obey your routing directions?

199 Mr. Martin: It was their privilege, yes, sir;

those are the two cases I recall.

Mr. Jouett: That was because you made the contract that way: you did not have to buy it that way?

Mr. Martin: I did. Mr. Jouett: Sir?

Mr. Martin: I did: I could not buy it from anybody else. That is the feature of proprietary medicine and proprietary paint.

Mr. Jouett: That is proprietary medicine?

Mr. Martin: Yes, sir; all my proprietary medicine I bought on the same basis.

Mr. Jouett: And they disregarded your routing?

Mr. Martin: Yes, sir.

Mr. Jouett: You considered it was sufficiently advantageous for you to buy it, even if you bought it with that handicap?

Mr. Martin: I could not buy it anywhere else.

Mr. Jouett: That is all.

(Witness excused.)

Mr. Henderson: Mr. Commissioner, I would like to make a statement.

200 T. M. Henderson was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Henderson: The Traffic Bureau of Nashville is an association of merchants, manufacturers and shippers located in the city of Nashville, Tennessee; it is incorporated under the laws of the State of Tennessee, and is not organized for profit. The principal purposes of its charter are those of forwarding and protecting the interests of the merchants, manufacturers and shippers of the city of Nashville, as well as their patrons in all matters connected with the receiving and shipping of freight, freight rates, transportation and securing of such freight rates

to and from all shipping points as shall prevent discriminations against the city of Nashville, and shippers and

patrons of Nashville, Tennessee.

The Traffic Bureau is acting in this case as the representative of practically all the large receivers and shippers of freight located on the terminals of the Louisville & Nashville Railroad, Louisville & Nashville Terminal Company, Nashville, Chattanooga & St. Louis Railway and Tennesee Central Railroad at Nashville.

The present switching rates and rules of all the 201 lines serving Nashville have been a source of annovance to the shippers and receivers, and have been the subject of correspondence and discussions between the railroads serving Nashville on the one hand, and the merchants and manufacturers of Nashville on the other, for a number of years. In fact, since 1902, the beginning of the operation of the Tennessee Central Rail-

road.

This matter was discussed in Nashville on February 20, 1907, at a joint conference between officials representing the Louisville & Nashville Railroad Company, Nashville, Chattanoga & St. Louis Railway, Louisville & Nashville Terminal Company, Nashville Terminal Company, Illinois Central Railroad and the Southern Railway, the Illinois Central Railroad and Southern Railway at that time operating the Tennessee Central Railroad under lease, and a committee from the Board of Trade and the Nashville Grain Exchange, representing the merchants and manufacturers of Nashville.

Prior to 1907, there was no switching of any kind of freight, competitive or non-competitive, between the Illinois Central Railroad and Southern Railway, or between the Tennessee Central Railroad on the one hand and the Louisville & Nashville Railroad and Nashville, Chattanoga & St. Louis Railway on the other hand, but as a re-

sult of the 1907 conference, and in deference to 202 public opinion, the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway

agreed to switch all non-competitive traffic, except coal, by the Louisville & Nashville Railroad, and coal, cement and plaster by the Nashville, Chattanooga & St. Louis, to or from the Tennessee Central Railroad, which, as previously explained, was operated at that time under lease by the Illinois Central Railroad and Southern Railwav.

The charge fixed at that time, which is still in effect on non-competitive traffic, is \$3.00 per car. The Nashville, Chattanooga & St. Louis Railway by 8th revised page 44 of its I. C. C. 1958-A, effective December 14, 1913, eliminated cement and plaster from the list of non-competitive articles that they would not switch, and as a result of the decision in I. C. C. Docket Number 4604, Traffic Bureau of Nashville v. Louisville & Nashville Railroad Company, et al., 28th I. C. C. 533-542, non-competitive coal is now switched between the Tennessee Central Railroad on the one hand and the Louisville & Nashville Railroad Company and Nashville, Chattanooga & St. Louis Railway on the other hand, at \$3.00 per car, the same as applicable to other non-competitive traffic.

I will file as Exhibit Number 2 to my testimony, a statement of the switching charges at Nashville, and applicable between industries, warehouses, elevators, etc., on the Louisville & Nashville Railroad Company and the Louisville & Nashville Railroad

Company and the Louisville & Nashville Terminal Company and junction with the Tennessee Central Railroad.

(The statement, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 2, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 2.

CITY OF NASHVILLE, ET AL.,

vs.

LOUISVILLE & NASHVILLE R. R. Co., ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

STATEMENT OF SWITCHING CHARGES AT NASHVILLE, TENNESSEE, APPLICABLE BETWEEN INDUSTRIES, WAREHOUSES, ELEVATORS, ETC., ON THE L. & N. R. R. CO. AND L. & N. TERMINAL CO., AND JUNCTION WITH THE TENNESSEE CENTRAL RAILROAD CO.

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Charges shown in paragraphs VI and VII of the complaint and admitted in the answer of the Louisville & Nashville Railroad Co.

Tariff Authorities:

Louisville & Nashville R. R. G. F. O. 1930, I. C. C. No. A-12658.

Louisville & Nashville R. R. Nashville Local Tariff No. 2, I. C. C. No. A-11500.

Mr. Henderson: That shows that the charge on all noncompetitive freight is \$3.00 per car, regardless of the weight, and on competitive freight, the switching charge ranges from \$12.00 to \$36.00 per car, using an average weight of 60,000 pounds on grain, 50,000 pounds on lumber, and 30,000 on other freight.

I will file as Exhibit Number 3 to my testimony, a statement showing the switching charges at Nashville. applicable between industries, warehouses, elevators, etc., on the Nashville, Chattanooga & St. Louis Railway and

junction with the Tennessee Central Railroad.

(The statement, so offered and identified, was received in evidence and thereupon marked Complainants' 204 Exhibit 3, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 3.

CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE R. R. Co., ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

STATEMENT OF SWITCHING CHARGES AT NASHVILLE, TENNESSEE, APPLICABLE BETWEEN INDUSTRIES, WAREHOUSES, ELEVATORS, ETC., ON THE N., C. & St. L. R'y AND L. & N. TERMINAL CO., AND JUNCTION WITH THE TENNESSEE CENTRAL RAILROAD CO.

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Second Town	
Special from	
Lumber	. 15.00
Commodities, regardless of weight:	= 00
Horses and mules	7.00
Cattle	7.00
Hogs, Single Deck	7.00
Sheep, Single Deck	7.00

Charges shown in paragraph VII of the complaint and admitted in answer of Nashville, Chattanooga & St. Louis Railway.

Tariff Authority—Nashville, Chattanooga & St. Louis Railway, I. C. C. No. 1958-A.

NOTE: Since the complaint was filed, the Nashville, Chattanooga & St. Louis R'y has issued revised page 44 to its I. C. C. No. 1958-A which cancelled, effective January 25, 1914, the switching charges applicable to competitive freight, and will not at the present time switch competitive freight to or from Junction with the Tennessee Central Railroad at any price.

Mr. Henderson: This statement shows that on non-competitive freight, of all kinds the switching charge is \$3.00 per car and on competitive freight the charges range from \$7.00 to \$36.00, using an average of 60,000 pounds on grain, 50,000 pounds on lumber and 30,000 pounds on other articles, except the commodity rates specified, which rates apply regardless of the weight of the car.

Since this complaint was filed, or about the time it was filed—I don't recall, but some date afterwards—the Nashville, Chattanooga & St. Louis Railway issued revised page 44 to its I. C. C. 1958-A, effective January 25, 1914, and eliminated from its tariff all of the competitive

switching charges shown on that statement.

The Louisville & Nashville Railroad Terminal Tariff I. C. C. A-12658, however, shows all of the industries located on the individual terminals of the Louisville & Nashville Railroad in East Nashville and the individual terminals of the Nashville, Chattanooga & St. Louis Railway in West Nashville, and the industries on the Louisville & Nashville Terminal Company in the down town

district; in fact they show every industry in Nashville located on what they term the Nashville Ter-

minals at the present time; and competitive freight reaching Nashville via the Tennessee Central Railroad, destined to any of the industries shown in the Louisville & Nashville tariff, would have to be handled at the competitive switching rates shown in Exhibit Number 2, which are higher than the old rates of the Nashville, Chattanooga & St. Louis Railway.

I will file Exhibit Number 4.

Commissioner Meyer: Before you go on with that, Mr. Henderson, does the tariff of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis state that these companies will not switch through the junction with the Tennessee Central at any price?

Mr. Henderson: No, sir.

Commissioner Meyer: Has the tariff been filed that states that?

Mr. Henderson: No, sir, not that I have seen. The Nashville, Chattanooga & St. Louis, by amendment to its switching tariff, canceled all of the competitive switching rates shown on my Exhibit Number 3.

Commissioner Meyer: Do you know of any instance in which either company refused to accept for shipment a car on the basis of its local distance tariff?

Mr. Henderson: I do not know of any instance where they have ever refused to accept a car on the basis of these switching rates that I have shown. If it has ever been done I do not know it.

Commissioner Meyer: Then will you not please, for the benefit of the record, tell us where you derived this information that these companies will not now switch competitive freight to or from the junction with the Tennessee Central at any price?

Mr. Henderson: You mean the Nashville, Chatta-

nooga & St. Louis?

Commissioner Meyer: Oh, that relates only to the Nashville, Chattanooga & St. Louis and not the Louisville

& Nashville?

Mr. Henderson: No, sir; that was by revised page 44 of the Nashville, Chattanooga & St. Louis to I. C. C. Number 1958-A, effective January 25th, they eliminated these charges. They did not say that they would not accept the freight and handle it at the local mileage scale. They may do that yet. But under the Louisville & Nashville Tariff, all of these industries can be reached at the

Louisville & Nashville's switching charges shown on Exhibit Number 2, regardless of the Nashville,

Chattanooga & St. Louis' cancellation.

Mr. Jouett: Just for information, I will say there is nothing in the Louisville & Nashville tariff that agrees to switching at these rates, is there?

Mr. Henderson: You mean the Louisville & Nash-

ville switching tariff?

Mr. Jouett: Yes, sir.

Mr. Henderson: No, sir; those rates show where I got them—out of the Louisville & Nashville local tariff. This scale of rates between Nashville, Tennessee, and Overton, Tennessee, are published in their Nashville local tariff.

Commissioner Meyer: As I understand you, then, I. C. C. 1958-A eliminates the switching charges heretofore in effect, and you conclude from that that they will not receive for switching to the junction with the Tennessee Central any cars for the reason that there is not now any tariff in effect applicable to such movement.

Mr. Henderson: Well, I assumed that was the intention of the cancellation. Whether they have actually refused to do that, I do not know. That was my idea as to why it was canceled—that they would not do it.

Commissioner Meyer: You may proceed, Mr. Hen-

derson.

Mr. Henderson: I will file Exhibit No. 4.

(The document in question was received in evidence and thereupon marked Complainant's Exhibit 4, Witness Henderson, received March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 4.

CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE R. R. Co., ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

STATEMENT OF SWITCHING CHARGES AT NASHVILLE, TENNESSEE, APPLICABLE BETWEEN INDUSTRIES, WAREHOUSES, ELEVATORS, ETC., ON THE TENNESSEE CENTRAL RAILROAD AND VINE HILL OR BAXTER HEIGHTS: JUNCTIONS WITH THE L. & N. R. R. AND N. C. & St. L. R'y.

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Cherry, Cedar)50,000	pounds.	 				12.50
Lumber50,000	"	 				15.00
Special Iron						18.00
Horses and mules						5.00
Cattle						5.00
Hogs & Sheep, Single Deck						5.00

NOTE: Switching charge between Hermitage Elevator Warehouse and Baxter Heights (Junction with Nashville, Chattanooga & St. Louis R'y) on grain, carload, \$2.00 per car both competitive and non-competitive.

Charges shown in paragraphs XII, XIII and XIV of the complaint and admitted in the answer of the Tennessee Central Railroad Co..

Tariff Authority—Tennessee Central Railroad, H. B. Chamberlain and W. K. McAlister, Receivers, I. C. C. No. A-274 and I. C. C. No. A-323.

208 Mr. Henderson: Exhibit Number 4 is a statement showing the switching charges at Nashville, applicable between industries, warehouses, elevators, etc., on the Tennessee Central Railroad and Nashville Terminal Company and Vine Hill or Baxter Heights; junctions with the Louisville & Nashville Railroad Company or Nashville, Chattanooga & St. Louis Railway at Nashville, respectively. This statement shows that the switching charge on all non-competitive freight, regardless of weight, except on grain to the Hermitage Elevator, is \$3.00 per car and the switching charges on competitive freight range from \$5.00 to \$36.00 per car, except on grain to the Hermitage elevator, these charges having been arrived at by using an average of 60,000 pounds on grain, 50,000 pounds on lumber and 30,000 pounds on other commodities.

Commissioner Meyer: Mr. Henderson, will you please take your Exhibit Number 1, which is this map of the Tennessee Central and identify Baxter Heights?

Mr. Henderson: Yes, sir.

Commisioner Meyer: I understand that that locality

is immediately north of West End Park.

The record may show that the witness places a circle upon Exhibit Number 1 immediately below the red figure 15 to indicate Baxter Heights.

209 Mr. Henderson: Now this \$2.00 switching charge to and from the Hermitage elevator is ab-

sorbed by the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway on any competitive grain reaching Nashville via either of their lines and the outbound switching charge of \$2.00 is also absorbed by these lines when the grain is reshipped from Nashville via either the Louisville & Nashville Railroad or Nashville Railroad or

ville, Chattanooga & St. Louis Railway.

This is the only instance in which any switching charge on any commodity to or from any industry is absorbed by any of the Nashville lines and is also the only exception made whereby any non-competitive commodity is switched for less than \$3.00 per car, or whereby any competitive commodity is switched for less than the

charges shown on Exhibits 2, 3 and 4 to my testimony, as applicable to competitive freight.

These exhibits, as explained, give the situation as to switching between the Nashville lines as it is today.

I was connected with the Southern Railway as chief clerk to the general freight agent of the Southern Railway at Nashville, for about nine months prior to the time the Tennessee Central Railroad resumed operation of its

line on the first of July, 1908, and from that time
was chief clerk to the general freight agent of the
Tennessee Central Railroad until February, 1911,
when I became associated with the Traffic Bureau of

Nashville, where I have been continuously ever since.

During my connection with the Southern Railway and

During my connection with the Southern Railway and the Tennessee Central Railroad, these switching rules were a continual source of annoyance to the receivers and shippers on all of the terminals, as it frequently happened, regardless of the efforts made by the Nashville merchants to have their freight arrive via the line on which they were located, through some oversight on their own part, or the part of the shipper, or of some one of the railroads participating in the haul, the car would arrive via the Tennessee Central Railroad consigned to a firm on the Louisville & Nashville Railroad or Nashville, Chattanooga & St. Louis Railway terminals, or vice versa. These cases came up constantly during my four years' service with the Nashville railroads and have continued since my connection with the Traffic Bureau.

Where there was no routing shown on the bill of lading, the consignee was either forced to pay these com-

petitive switching rates or have the freight drayed, except of course in cases where the shipper had failed to follow out the consignee's instructions, and in this case, the excess charges were charged back to the shipper. Where the bill of lading was properly

routed, the line making the error in routing was forced to stand the extra expense of making proper delivery, under authority of the Interstate Commerce Commission's Conference Rules, Number 214. However, regardless of whether the shipper, consignee or railroad made the error in routing and eventually paid the extra charge, the consignee was inconvenienced by the delay in effecting delivery and in a number of instances there was a delay in collecting back from the shipper or the railroad

at fault, these excess charges.

These switching rates and rules and the inconveniences incident thereto have been discussed by the executive committee and the board of directors of the Traffic Bureau from time to time ever since the organization of the Bureau in January, 1911, and as a final result of these various discussions I, as commissioner of the Traffic Bureau, was instructed by the board of directors to address the traffic officials of the Louisville & Nashville Railroad, Tennessee Central Railroad Company, Nashville, Chattanooga & St. Louis Railway and Louisville & Nashville Terminal Company, asking that

212 restrictions applicable to competitive freight particularly, be removed and that the charge for competitive as well as non-competitive freight be made the same as at a majority of other points served by these carriers, and that several rules, and regulations which in our opinion were arbitrary and inconsistent, be removed from the tariffs and in accordance with these instructions, I wrote these officials, under date of August 8, 1913, as per copy of letter, which I will file as Exhibit Number 5.

(The letter, so offered and referred to, was received in evidence and thereupon marked Complainants' Exhibit 5, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY) Complainants' Exhibit No. 5. CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL., I. C. C. Docket No. 6484 Witness, Henderson.

TRAFFIC BUREAU OF NASHVILLE

Office of Commissioner Nashville, Tenn., Aug. 8, 1913. File 269-A

Mr. A. R. Smith, 3rd V. P., L. & N. R. R., Louisville, Ky. Mr. H. B. Chamberlain, Receiver, T. C. R. R., Nashville, Tenn.

Mr. H. F. Smith, V. P. & T. M.,

N. C. & St. L. R'y, Nashville, Tenn.

Mr. W. P. Bruce, Supt.,

L. & N. Terminal Co., Nashville, Tenn.

Dear Sirs:

The switching rates, rules and regulations in effect at Nashville have been the subject of correspondence and discussion between the railroads serving Nashville, and merchants and manufacturers of Nashville for a number of years, in fact since 1902, the beginning of the

operation of the Tennessee Central Railroad.

The matter was discussed in Nashville on Feb. 20, 1907, at a joint conference between officials representing the Louisville & Nashville Railroad, Illinois Central Railroad, Southern Railway, Nashville, Chattanooga & St. Louis R'y, Nashville Terminal Co., Louisville & Nashville Terminal Company and a committee from the Board of Trade, and Nashville Grain Exchange, representing the merchants and manufacturers of Nashville and recently in the Coal Rate Case now pending before the Interstate Commerce Commission.

As a result of the 1907 conference the Nashville lines agreed to switch for each other non-competitive freight only, at a flat rate of \$3.00 per car, with the exception of coal by the Louisville & Nashville Railroad Co., Illinois Central Railroad and Southern Railway, and coal, cement

and plaster by the N. C. & St. L. R'y.

At this conference the representatives of the Illinois Central Railroad and the Southern Railway, then operating under lease the Tennessee Central R. R. expressed a willingness to switch competitive as well as non-competitive freight at a reasonable switching charge, provided the other Nashville lines would do likewise.

The L. & N. Railroad, the N. C. & St. L. R'y and the L. & N. Terminal Co., declined to enter into any arrangement for switching competitive freight (except for each other) except at class rates, ranging from 12 cents, first class, down to 2½ and 3 cents on heavy commodities, such

as lumber, grain, etc.

These switching charges on competitive freight are still in force, and are, of course, prohibitive, and in effect mean that there is no switching of competitive freight between the Tennessee Central R. R. on the one hand, and the N. C. & St. L. R'y and L. & N. R. R. Co., on the other hand.

At the conference referred to, it was the consensus of opinion of the Nashville representatives, and we are of the same opinion, that the refusal of the Nashville lines to interchange competitive freight, on reasonable terms, is largely responsible for the fact that Nashville has not grown as a manufacturing and distributing center as rapidly as other cities in Tennessee and in other States, that have no more natural advantages, but do enjoy the free interchange, between all roads serving these other cities, of competitive as well as non-competitive freight, which privilege is denied Nashville.

The present rules of all the Nashville lines prohibit the switching, at any price, of cars between an industry, warehouse or elevator, situated on the terminals of the L. & N. R. R. Co., N. C. & St. L. R'y or the L. & N. Terminal Co., on the one hand, and an industry, warehouse or elevator on the Tennessee Central Railroad or Nash-

ville Terminal Co., on the other hand.

This can not be considered competitive business, as under the existing rules, the only way this freight can be transferred, is by dray, which frequently prohibits the merchant on one terminal doing business with the merchant on the other terminal, and we see no reason why intraurban switching should not be performed by the Nashville lines at a nominal charge per car.

We know you realize the fact that the interests of Nashville and the lines serving Nashville are in many ways identical and that whatever affects the City of Nashville adversely, in the end operates to your disad-

vantage.

We believe that intraurban switching and the interchange of competitive as well as non-competitive freight, on a reasonable basis, would be greatly to the advantage of the City of Nashville and that the increased growth and the subsequent increased tonnage into and out of this city would more than offset any temporary loss at any of the lines serving Nashville might sustain on account of the establishment of the unrestricted switching arrangements we desire.

The Traffic Bureau of Nashville, on behalf of its members, and the City as a whole, asks that you give this matter careful consideration, and advise as promptly as possible, if you will not accede to this request, arranging between yourselves for intraurban switching and for the interchange of all freight regardless of the point of origin or the contents of the car, on a reasonable basis, in line

with charges made for similar services at other points.

Yours truly.

TRAFFIC BUREAU OF NASHVILLE (Signed) T. M. HENDERSON,

(Copied by V)

Commissioner.

Mr. Henderson: This letter goes into the matter fully and explains just what revision was asked in these rules at that time.

I will file as Exhibit Number 6 a letter which is a reply to that letter just filed as Exhibit Number 5, from the superintendent of the Louisville & Nashville Terminal Company, in which he disclaims any authority and refers us to the traffic departments of the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway.

213 (The letter, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 6, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

Complainants' Exhibit No. 6.

CITY OF NASHVILLE, ET AL., vs.

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY, NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y, NASHVILLE TERMINALS.

> Office of the Superintendent. Nashville, Tenn., September 5, 1913.

Mr. T. M. Henderson,

Commissioner, Traffic Bureau of Nashville, Nashville, Tenn.

Dear Sir:

In reply to your letter of August 8th, with reference to reciprocal switching arrangements at Nashville, I beg to advise that this matter is handled entirely by the Traffic Departments of the two roads operating the Nashville Terminals.

> Yours truly, (Signed) W. P. Bruce, Superintendent.

(Copied by V)

Mr. Henderson: I will file as Exhibit Number 7, reply from H. F. Smith, vice-president and traffic manager of the Nashville, Chattanooga & St. Louis Railway, in which he declines to discuss the matter.

(The letter, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 7, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 7

CITY OF NASHVILLE, ET AL.,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

Nashville, Chattanooga & St. Louis Railway, Office of H. F. Smith, Vice President & Traffic Manager.

Nashville, Tenn., September 6, 1913.

Mr. T. M. Henderson, Commissioner, Traffic Bureau of Nashville, Nashville, Tennessee.

Dear Sir:

I have your letter of 8th ultimo (received in this office on 21st ultimo) relating to rules and regulations observed by the Louisville & Nashville Terminal Company in the conduct of this Company's Terminal freight service at Nashville.

So far as we know, the service rendered is reasonably and substantially satisfactory to our patrons—at least we are without specific information to the contrary.

It being generally understood that it is our purpose, pleasure and practice to serve our patrons efficiently, effectively, and satisfactorily, I am persuaded we may confidently anticipate receiving advice in the future, as in the past, from any of our Nashville shippers, receivers and manufacturers who may feel that the existing rules, rates and regulations governing the Terminal service this Company accords them is not reasonably efficient and satisfactory.

With best wishes.

Yours very truly,
(Signed) H. F. Smith,
Vice-President & Traffic Manager.

(Copied by V)

Mr. Henderson: I will file as Exhibit Number 8, reply received from A. R. Smith, vice-president of the Louisville & Nashville Railroad Company, in reply to our request, in which Mr. Smith goes into the matter fully, giving his views and reasons for declining the request.

(The letter, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 8, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 8.

CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

Louisville & Nashville Railroad Co., Traffic Department,

> Office of the Third Vice President. Louisville, Ky., Sept. 4, 1913.

Mr. T. M. Henderson, Commissioner, Traffic Bureau of Nashville, Nashville, Tenn.

Dear Sir:

I have delayed replying to your letter of August 8th, file 269-A, requesting that this company enter into reciprocal switching arrangements, generally, with the other Nashville lines, and also to arrange for so-called intraurban switching, with the intention of giving the proposition full thought and consideration.

Reciprocal Switching.

You, of course, are aware that the greater portion of the terminals of the N. C. & St. L. R'y and of the L. & N. R. R. are either jointly owned or are pooled; that the individual facilities of each of the two lines within the Nashville switching limits are approximately equal; and that the whole of the facilities are operated in joint interest. Your proposition, therefore, is that the L. & N. and N. C. & St. L. roads do a general switching business for the Tennessee Central Railroad.

The tracks of the L. & N. R. R. at Nashville were constructed at a very great cost, for the conduct of the business of said company, to serve the patrons at Nashville

in the transportation of business to and from that point, and to serve its patrons at other places in the conduct of business between such places and Nashville. The same is true, of course, of the tracks which it owns jointly with the N. C. & St. L. R'y. None of these tracks were constructed with the intention of permitting their use by any other carrier (except, of course, the N. C. & St. L. R'y) and it does not appear to us at all reasonable that we should be required to permit their use for any other traffic than that for which they were constructed. know of no cases where terminal facilities are constructed by any road intended, directly or indirectly, to be used for the benefit of another railroad, whether the latter be a competitor or otherwise. Of course, it is not infrequently the case that there are pooling or rental arrangements as between railroads.

I desire to submit the following facts:

Our trackage facilities at Nashville are now taxed to their approximate limit in the conduct of the business for which they are intended. To cause them to be used for the conduct of the business of the Tennessee Central R. R. would crowd them beyond limit and cause, with respect both to that line and the two other lines, an excessive unit cost.

Should our terminal facilities at Nashville be used for the conduct of the business of the Tennessee Central R. R., or other companies who are not interested in the expense thereof, then the desire to construct additional terminals or tracks would be lessened. In the first place, this Company would not wish to invest its capital under such conditions, when it alone would have to bear the burden thereof; secondly, the non-owning lines having the use of the facilities constructed with other people's capital at a nominal charge—frequently less than cost would have no incentive to construct facilities of its own. which would involve a heavy capital outlay and interest charge, which, plus the maintenance and operating expense, would produce a unit cost many times over the switching cost to be paid for the use of other people's facilities.

It is a fact, easily susceptible of positive proof, that it costs considerably more to switch another line's business than it does to switch one's own, as the average of the number of movements per individual car, in the first instance, is frequently more than double that in the second. This latter fact tends to congestion of terminals and consequent failure of prompt service on all of the traffic handled in the terminal. Thus, in addition to the

interest of the carrier, that of the public is seriously inconvenienced.

If a railroad provides trackage facilities to shippers. thereby enabling the latter to do their business at the lowest possible haulage costs, it does not seem reasonable that such shippers should expect the facilities afforded at the expense of the constructing carrier, to be used for the conduct or in the interest of any other carrier.

Reciprocal switching arrangements between railroads means what the term, on its face, implies; that is, approximately equal service and facilities are to be afforded by each of the two or more interested lines. switching arrangements necessarily must mean that the service performed by each for the other shall, to an approximately equal extent, justify the same. That this latter condition does not now exist at Nashville, so far as the respective Tennessee Central and L. & N.-N. C. & St. L. facilities are concerned, of course, must be quite well-known to you: there would be absolutely no reciprocity. The value of the facilities of the Tennessee Central R. R. to the L. & N. R. R. would offset the value of those of the L. & N. R. R. to the Tennessee Central only in the smallest degree, and there would be practically no compensation advantage to the L. & N. R. R. should its terminals be thrown open to the general use of the Tennessee Central R. R., or other similarly situated railroads, and the enormous expenditures made by the L. & N. R. R. would, by reciprocal switching, be open to the free use by the competitive lines without just compensation.

Any contention that the policy of the Louisville & Nashville R. R. at Nashville has been adverse to the interests of manufacturers located thereon, I do not believe can be successfully sustained. Said railroad not only switches traffic passing between points from and to which it does not compete, but it freely switches important commodities originating at or having destination at local stations on other lines, which displace the commodi-

ties handled by the L. & N. R. R.

Intraurban Switching.

In isolated instances, this Company has permitted freight to be loaded in a car at one point in the Nashville switching limits and moved to another, for a price. This privilege has been granted only where the inconvenience of local transportation is so great as to make the concession desirable, and where such will not inconvenience

other patrons at Nashville or elsewhere.

All of the facilities at Nashville, designed for use at that point locally, were constructed for the transportation of property and persons between Nashville and other communities; none were biult for the purpose of doing a local switching or transfer business, and it must be obvious that we can not afford to spend a dollar in providing any facilities for the conduct of the latter traffic.

We are willing to continue, as long as we may be justified in doing so, the limited amount of local service at Nashville that we are now doing, under the same restrictions and conditions, but we can not afford to generally

engage in such traffic.

When the supply of freight equipment is plentiful, no hardship will result in moving bulk or liquid commodities between one delivery in Nashville and another. The opposite is the case during the seasons of heavy freight movement and congested terminals. Our cars then should be devoted to those patrons who ship from one community to another, and for whose use and benefit the rails and equipment of the carrier were constructed. A car in use in handling a Nashville shipper's freight to Louisville is, approximately, no longer in that particular service than if it were moving a shipment to North Nashville; to illustrate: a car will be loaded at Nashville today and will be unloaded in Louisville tomorrow; no more time would be consumed than if it were unloaded at some other delivery in the Nashville switching limits.

The Nashville Shippers' Interest.

A most careful study of these matters, from the viewpoint of the shipping public at Nashville, so far as I am able to comprehend it, leads me to the conclusion that the policies of the N. C. & St. L. R'y and L. & N. R. R. in the matters dealt with, are not in any wise inimical to the interests of said public.

As to switching: Of course, as you are aware, the non-competitive traffic of the Tennessee Central R. R. with one exception, is switched on the joint terminals.

The rates of the L. & N. R. R. and N. C. & St. L. R'y into and out of Nashville on competitive traffic are as low as those of the Tennessee Central R. R., in all instances; if they should not be, in any instance, the traffic involved becomes non-competitive.

I think I may fairly claim that the transportation service of the L. & N. R. R. and the N. C. & St. L. R'y can not be excelled by any other railroad in the South; these two roads, with their connections, can give as good service in any direction as can their competitor and its connections.

Now, these two facts being admitted, how can it be against the interest of a Nashville shipper or receiver located on the joint tracks heretofore described, if he is asked to use the rails of the proprietary lines, securing as good or better transportation service, and at just as low freight charges? It will not gain the shipper anything, for instance, if he be permitted to use the Illinois Central R. R. and Tennessee Central R. R. in handling a shipment from St. Louis, but it would be greatly against the interest of the L. & N. R. R. which has built its rails to St. Louis and has constructed expensive terminals at Nashville on which to handle thereat the St. Louis traffic.

On the other hand, I believe, to switch the Tennessee Central R. R.'s competitive traffic would, in the end, prove a positive detriment. On an outbound shipment there would be the delay in procuring an empty car and placing it, as against what would occur in case the car was ordered for L. & N. handling. Both in and outbound there would necessarily be a delay in switching a car around to the Tennessee Central Railroad, which would consume as much time in its own switching as if the car had been handled over the L. & N. R. R. The consequent extra service would inevitably back up on the straight L. & N. business that this shipper, and all others, might In other words, the efficiency of the whole of the terminal service of the L. & N. R. R. would be slackened to the detriment of the whole shipping and receiving public.

Beyond the mere satisfaction that might be accorded him due to the fact that a shipper would have the option of using the rails of our competitor, I am unable to see a single point of advantage that would accrue to the Nashville shipping public were your request acceded to. I feel though, that our patrons, on further consideration of the question, will concede the injustice of insisting that a railroad company which has exercised forethought and has spent millions of money in the acquisition and construction of valuable terminals, ought not to be required to surrender these to the use of a competing line, with the double result of hampering its own use of the terminals, and, at the same time, enabling the competitor to deprive the owning company of the benefit of its investment, when the net result is merely an advantage to the

rival company, and with no corresponding advantage to

the public.

With regard to the local switching feature: Were the L. & N. R. R. to agree to the proposition, I can see where, in sporadic cases, it might be of benefit to have the railroad company compete with the wagons in the city transfer of freight, provided it is done at a nominal As I have stated to you, important instances where the commodity itself is such as not to readily bear wagon transportation have been pretty well taken care of. But, were we to accede to the wishes of the few shippers in this matter, it would inevitably work to the detriment of the Nashville public at large, in depleting the available supply of cars—which very often, at periods in the year, ranges below the demand-and the extra service that would be caused the railroads would add to the congestion and be detrimental to that efficiency of service for which the road and its facilities were constructed and which the public has every right to demand shall be kept up to the highest possible mark. In short, I mean to accede to this request, aside from any railroad interest involved, would be to meet the wishes of a few, contrary to the interests of the whole of the shipping public.

In stating these matters to you, I have frequently coupled the N. C. & St. L. R'y with the L. & N. R. R.: you should not consider such expressions as meaning that I am speaking for the management of the N. C. & St. L. R'y. This coupling is due to the joint ownership and joint operation of the major terminals in Nashville, making it otherwise difficult to clearly state the conditions.

Yours truly,
(Signed) A. R. SMITH,

Third Vice President.

Dict.

(Copied by V)

Mr. Henderson: I will also file as Exhibit Number 9, reply received from H. B. Chamberlain, one of 214 the receivers of the Tennessee Central Railroad Company.

(The letter, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 9, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.) (COPY)

Complainants' Exhibit No. 9.

CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

Tennessee Central Railroad Company. H. B. Chamberlain & W. K. McAllister, Receivers.

Nashville, Tenn., September 15, 1915. File 29 T D Reciprocal Switching at Nashville.

Mr. T. M. Henderson,

Commissioner, Traffic Bureau of Nashville. Nashville, Tenn.

Dear sir:

With reference to your joint letter of August 8th, file 269-A, which was not received until August 21st.

I regret I have not been able to give this communication the attention it deserves until now, in fact I do not know now that I can add anything to what has already been expressed by the officers of the Tennessee Central

prior to the receivership.

The Receivers firmly believe that reciprocal switching in Nashville would be of great benefit to the City in the way of building Nashville up, as it should be, thereby increasing its industries and population the same as has been done in other southern cities where reciprocal switching has existed, in fact this statement need not apply only to southern cities, but is what has built up many northern cities.

Railroads in our judgment are bound to profit by increased business when such results are attained, and we are prepared at all times to meet the representatives of other roads with a view of working to the end suggested

in the closing paragraph of your letter.

Yours truly, (Signed) H. B. CHAMBERLAIN, Receiver.

Mr. Henderson: Mr. Chamberlain expressed the opinion that the arrangement requested by us would be of great benefit to the city and to the railroads as well. stating that his company was at all times willing to meet the representatives of the other roads with a view of working to the end suggested in our communication to the traffic officials of these roads.

The refusal of the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway to make any change in the existing rates and rules applicable to switching at Nashville, and the offer of the Tennessee Central Railroad to join the other lines in making the desired arrangement, was submitted to the directors, and before proceeding further in the matter a meeting of the members of the Traffic Bureau was called, and I will file as Exhibit Number 10 certified copy of the minutes of the called meeting, held September 16, 1913.

215 (The minutes of the meeting, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 10, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Complainants' Exhibit No. 10

CITY OF NASHVILLE, ET AL.,

US.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

Minutes, called meeting, Traffic Bureau of Nashville, held Sept. 16, 1913.

Present:

President Martin.

C. S. Kincaid, of Castner-Knott Dry Goods Co.,

J. R. Jackson, of Orr, Jackson & Co., J. J. Naive, of Naive-Spillers Co.,

F. C. Woods, Cumberland Seed Co., Ed. Reece, of McKay, Reece & Co.,

T. M. Henderson,

T. J. Burke,

E. M. Foster, of the Banner Pub. Co., Brown Buford, of H. G. Lipscomb & Co.,

W. H. Clarke, of Phillipps & Buttorff Mfg. Co.,

W. B. Dickerson, of American Paper Box Co.,

R. D. Herbert, of W. G. Bush & Co.,

D. W. Binns, of Jones & Hopkins Mfg. Co.,

Frank W. Washington, of Brandon Printing Co., Harry Murrey, of Orr, Mizell & Murrey,

J. C. McQuiddy, of McQuiddy Printing Co., John Coode, of Phillips-Trawick Co.,

C. M. Morford, of Ragland-Baxter-Morford Co.,

E. S. Shannon,

T. R. Lesuer,

C. E. Hunt, of Hunt, Washington & Smith,

W. C. Pollard, of Gray & Dudley Hdwe. Co., A. L. Lowe, of F. G. Lowe & Co.,

G. C. Billingsley, of Bradford Wholesale Furn. Co., Morris and W. L. Davis, of Harris, Davis & Co.

President Martin stated the purpose of meeting, outlined the work of the Bureau in Atlanta, Birmingham and Bowling Green rate cases, Pacific Coast rates, coal case and Express case.

He announced all obligations met except a contingent fee of \$1,000.00 to be due in the event of a material reduction in coal rates.

He suggested the duty of taking up the question of Reciprocal Switching.

He read copy of an appeal to the Railroads entering

Nashville for the privilege of interswitching.

He read letter of V. P., A. R. Smith, of L. & N. R. R. courteously declining to allow the privilege and giving his reasons therefor.

He also read reply of H. F. Smith, V. P. & Traffic

Mgr. of N. C. & St. L. R'y, declining the privilege.

He next read letter of W. P. Bruce, Master of terminals of L. & N. Terminal Co., disclaiming any jurisdiction over the matter.

Also of H. B. Chamberlain, Associate Receiver of the Tennessee Central R. R., agreeing to join with the other roads in any such move.

Mr. Martin disclaimed that any of the reasons against

granting our request really existed.

He called on Commissioner Henderson to state the recent decisions of the Interstate Commerce Commission

on similar requests from other cities.

Commissioner Henderson cited the petition of Baltimore vs. Pennsylvania R. R., and of St. Louis, Peoria & Springfield R. R. vs. the Peoria & Pekin Union, and of Pensacola case, where the L. & N. R. R. itself, was assailed.

Mr. Foster asked recommendation of Executive Committee and Directorate, and cost of prosecuting the case.

Mr. Martin answered that the Executives recommended filing petition and estimated cost at \$4,000 or \$5,000, predicted a hard fight, and individually urged that we make the fight.

Mr. Morris, mentioned cost to shippers of perishable goods refused by consignees as goods ordered T. C. delivery, which delivery was refused on account of failure of shippers to properly route. He said he knew of losses of several hundreds of dollars by refusal of N. C. & St. L. R'y to deliver car to L. & N. tracks.

He claimed the losses arose from lack of acquaintance of the outside shipping world with the fact that Nashville's was in isolated case.

Mr. Hunt said the territory from which they buy was limited to fields tapped by connections of the several lines

in Nashville.

Mr. Foster moved 'tis the sense of this meeting that the petition for the relief be made and that Executive Committee be instructed to proceed and that President appoint a committee to confer with other commercial bodies and ask their co-operations in raising funds to push the case to a conclusion.

This was seconded by Mr. Goode.

Mr. Morford said that prospecting railroads and manufacturers will fight shy of a town so tied up as to terminals as Nashville.

Mr. A. L. Lowe said he believed all the members would assume their proportion of the cost mentioned, and said

he, for one, would assume his share.

Mr. Shannon said he believed such action was necessary, and believed the City of Nashville should be asked to co-operate.

Motion carried.

It was moved that it be recommended to the Executive Committee that petitions be filed before both the State and the Interstate Commissions, and that a circular be sent all other members, asking that the entire membership signify to the Committee their willingness to assume a proportion of the expense to be borne by this Bureau and state the proportion assumed.

Carried.

Meeting then adjourned.

(Signed) W. H. CLARKE, Secretary.

Approved:

C. S. MARTIN, Chairman.

Mr. Henderson: At this meeting the question was discussed and it was the consensus of opinion of the members present that a formal petition should be filed, both before the State Railroad Commission and the Interstate Commerce Commission, protesting against the present switching rates, rules and regulations, and asking that reasonable rates, rules and regulations be established, and the petition was filed with the Interstate Commerce Commission on January 12, 1914, as a joint complaint of the city of Nashville and the Traffic Bureau, which is the complaint now under discussion.

The complaint alleges in paragraph 1 that petitioner,

City of Nashville, is a corporation organized and existing under the laws of the State of Tennessee; is authorized and empowered by its charter of incorporation to plead and be impleaded in all courts of law and equity and in all actions whatsoever, and that the Traffic Bureau of Nashville is an association of merchants and manufac-

turers of Nashville, located in the city of Nashville, State of Tennessee, and is incorporated under the 216

laws of the State of Tennessee.

In all of the answers of the defendants, it is stated that they have not sufficient knowledge or information to enable them to either admit or deny these allegations. I have previously testified as to the incorporation of the Traffic Bureau and if there is any desire to question the allegations contained in paragraph 1 of the complaint, we will submit charters of the city of Nashville and of the Traffic Bureau of Nashville, if this is necessary.

Mr. Jouett: We will not make any question about

that incorporation.

Mr. Henderson: I only want to offer it if there is

any question.

Mr. Jouett: There will be no question as to the incorporation of the city of Nashville or the Traffic Bureau.

Mr. Henderson: Paragraph 2 of the complaint charges that defendants are common carriers, subject to the Act to Regulate Commerce, which is admitted by all of the defendants in their answers.

The complaint alleges in paragraph 3 that the Louisville & Nashville Terminal Company is a terminal cor-

poration created and organized under the laws of 217 the State of Tennessee and that said company does not file with this Commission any switching or terminal tariffs, the property being leased for 99 years from December 3, 1902, to the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St.

Louis Railway.

This is admitted in the answers of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, except that these companies state that December 3, 1902, should be substituted for July 1, 1896, evidently meaning that July 1, 1896, is the date of the lease, and that this date should be substituted for that shown in the complaint, and the answer of the Louisville & Nashville Terminal Company confirms this, except in this answer the date of the lease is given as June 15, 1896, and modified by supplemental lease of December 3, 1902, stating that since June 15, 1896, the Louisville & Nashville Terminal Company has had no participation,

direct or indirect, with any of the matters or subjects referred to in the complaint, the rules and rates complained of, therefore, are the rules and rates of the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway, individually, as lessees of the Louisville & Nashville Terminal Company.

Paragraph 4 of the complaint is an allegation as 218 to the Nashville Terminal Company, similar to that in paragraph 3, relating to the Louisville & Nashville Terminal Company, and the allegations in this paragraph are admitted to be correct in the answer of

the Tennessee Central Railroad Company.

Paragraph 5 alleges the ownership of the entire capital stock of the Louisville & Nashville Terminal Company, and also alleges the control of the Nashville, Chattanooga & St. Louis Railway, through ownership of 71.78 per cent of the total outstanding capital stock of that company, by the Louisville & Nashville Railroad Com-

pany.

The answer of the Louisville & Nashville Railroad admits the ownership of the Louisville & Nashville Terminal Company stock and the ownership of the Nashville, Chattanooga & St. Louis Railway stock, but says that the Nashville, Chattanooga & St. Louis Railway is wholly separate from and independent of the Louisville & Nashville Railroad in its management, operation and general policies.

The answer of the Nashville, Chattanooga & St. Louis Railway also admits the ownership of the stock by the Louisville & Nashville Railroad, but denies that its operation is controlled by the Louisville & Nashville Rail-

road.

It is admitted by both of these defendants that 219 the Louisville & Nashville Railroad Company does own a controlling interest in the stock of the Nashville, Chattanooga & St. Louis Railway, and it is a selfevident fact that owning and voting a large majority of the outstanding stock, that the Louisville & Nashville Railroad Company can at any time it desires to do so, absolutely control the Nashville, Chattanooga & St. Louis Railway, not only in its management and operation, but in its general policies, but to what extent this control is actually exercised, it is manifestly impossible for any one but an executive official of one of the other of the roads to pay.

Paragraph 6 of the complaint quotes rules and regulations, as published in the Louisville & Nashville Railroad Terminal Tariff, I. C. C. A-12658, applicable to

switching and other terminal charges at Nashville, and these charges as set out in the complaint are admitted in the answer of the Louisville & Nashville Railroad Company, except the addition following Nashville, Tennessee, seventh line from the bottom, of these words, "Whether such charges are absorbed by this company or added to its rates to and from Nashville, Tennessee."

We accept this correction, these words being left out

through clerical error in copying the rules.

220 The Louisville & Nashville Railroad also denies that the absorption of switching charges authorized in Rule 41/2, quoted on page 9 of the complaint, gives undue and unreasonable preference and advantage to carload grain traffic to and from the Hermitage elevator, or to the Hermitage elevator itself, or that it subjects all, or any, competitive carload freight at Nashville, or all or any industries, warehouses or elevators situated on the sidings or tracks of, or private sidings which connect with the Tennessee Central Railroad or the Nashville Terminal Company at Nashville, to undue or unreasonable preference or disadvantage, or that same is in violation of the Act to Regulate Commerce.

The Louisville & Nashville Railroad states in its answer it has not published in its tariff that it absorbs switching charge on competitive grain traffic to and from industries on the Tennessee Central Railroad, other than the Hermitage elevator, because the Tennessee Central Railroad does not switch such competitive traffic for the Louisville & Nashville Railroad to and from other industries, and the Louisville & Nashville Railroad Company, in its answer, states that the Louisville & Nashville Railroad is ready and willing to absorb the switching charge of the Tennessee Central Rail-

221 road upon all competitive traffic, whether grain or other traffic, moving to and from any and all other industries on the Tennessee Central Railroad to which the Tennessee Central will switch for the Louisville & Nash-

ville Railroad.

The Tennessee Central Railroad does, and will switch all competitive traffic of all kinds moving to and from any and all industries upon the Tennessee Central Railroad at Nashville, reaching Nashville or forwarded from Nashville via the Louisville & Nashville Railroad at the switching charges specified in paragraph 13 of the complaint, which are shown in my Exhibit Number 4, and which are admitted in the answer of the Tennessee Central Railroad Company to this complaint.

It is admitted by the Louisville & Nashville Railroad

that they do absorb switching charge on competitive

grain to and from the Hermitage elevator.

It is also admitted by the Louisville & Nashville Railroad that they do not absorb switching charge on grain or any other commodity to or from any other industry.

Mr. Jouett: Where is that admitted?

Mr. Henderson: Well, you admit it in your answer when you say you won't do it because you won't switch it.

You admit that you do not do it in any other place.

Mr. Jouett: I do not think that is quite a fair statement of it, to say that they won't switch it if the other road won't do it. I do not know whether the Commissioner catches the point there—on page 4 of our answer you will see the situation. I do not want to interrupt him except to just let him explain that as he goes along.

Commissioner Meyer: This brings it to the attention

of the Commission.

Mr. Henderson: On page 4 of your answer, paragraph 6, you said that "Defendant says it has not published in its tariff that it will absorb such switching charge upon competitive grain traffic to and from industries on the Tennessee Central Railroad other than said Hermitage elevator, because said company does not switch such competitive traffic for this defendant to and from other industries on its line."

Now, if you have not published it in your tariff you can not absorb it. So, I say it is admitted by your answer that you did not absorb any switching charge on anything except competitive grain to and from the Her-

mitage elevator; that is true, is it not?

Mr. Jouett: That is true, with that exception given;
I say that there is no switching charge to absorb.
Commissioner Meyer: Well, if you wish to supplement that you can do it when you call your witnesses.

Mr. Jouett: Yes, sir.

Mr. Henderson: Now, the mere fact that they are willing to absorb on other traffic to and from other industries, does not remove the preference and advantage given grain traffic to and from this elevator, and the elevator itself, nor does it remove the prejudice and disadvantage to which other industries and their traffic is subjected until they actually do for these other industries and for this other competitive traffic what they are now doing for competitive grain traffic to and from the Hermitage elevator.

We might as well say that because I might be willing to rob a bank I might be put in jail for it. You could not do it until after I robbed the bank.

Mr. Jouett: Now, we are willing to give you this \$2.00 in this case and in others where the tariff will per-

mit.

Mr. Henderson: You might say you are willing to pay a shipper \$4.00 a car to load his freight over your line, but you are not guilty of rebating until you do it. The fact that you might be willing to do it does not make you guilty.

The Louisville & Nashville Railroad Company denies that the switching charge of \$3.00 per car on noncompetitive traffic, authorized by Rule 15, quoted

on page 10 of the complaint, is unjust or unreasonable in and of itself, or relatively so. This statement is made with reference to the \$3.00 switching charge to all of the Nashville lines, and I will discuss that later and its application to all three of the rates at the same time.

The Louisville & Nashville Railroad also admits in their answer that at the time the complaint was filed, the tariff excepted coal from its provisions, when coming from the Tennessee Central Railroad, whether from competitive or non-competitive points, but denies that this subjected coal to undue and unreasonable prejudice and disadvantage, and states further that since the filing of the complaint, its tariff has been amended so that coal is no longer excepted from its provisions.

This amendment was made effective February 15, 1914, in partial compliance with the order of the Interstate Commerce Commission, I. C. C. Docket 4604, Traffic Bureau of Nashville vs. Louisville & Nashville Railroad, et al., in which the Commission ordered the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway to apply the same rates, rules and regulations to coal reaching Nashville via the Tennessee Cen-

tral Railroad as they contemporaneously maintain with respect to coal reaching Nashville either via

the Louisville & Nashville Railroad or Nashville, Chattanooga & St. Louis Railway, and while the three roads have amended their switching tariffs so that noncompetitive coal is now switched at \$3.00 per car, the same as other non-competitive freight, I do not consider that this is in strict compliance with the order of the Commission, as the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis, between themselves, make no difference in competitive and non-competitive coal.

Rule 15-B, quoted on page 10 of the complaint, applies to intraurban, or cross-town, switching, between elevators on the terminal limits of the Louisville & Nashville Railroad and elevators or warehouses on the Tennessee Central, all within the city limits. This is a matter, therefore, for the consideration of the State Railroad Commission and the complaint does not make any allegation with reference to this particular rule being in violation of the Act to Regulate Commerce.

Paragraph 7 of the complaint sets out the switching charges of the Louisville & Nashville Railroad Company applicable to competitive freight, which are, as shown in my Exhibit Number 2, and charges that these rates are unreasonable in and of themselves

and relatively so in violation of Sections 1 and 3 of the

Act to Regulate Commerce.

The Louisville & Nashville Railroad, in its answer, denies all the allegations contained in paragraph 7, but discussing paragraph 10 admits that competitive freight destined to or forwarded from Nashville via the Tennessee Central Railroad is subjected to the charges set out in paragraphs 7 and 8 of the complaint. I assume, therefore, that it was the intention of the Louisville & Nashville Railroad Company to deny only the unreasonableness of the rates and the discriminations charged, as they admit the accuracy of the rates and the fact that they are charged on competitive business, in answer to another section of the complaint.

Now, this same charge is made with reference to the Nashville, Chattanooga & St. Louis and Tennessee Central competitive switching rates, and those I will discuss

later, at one time, as to all three of the roads.

Paragraph 8 of the petition sets out the switching charges of the Nashville, Chattanooga & St. Louis Railway, as published in its Terminal Tariff Number 2, I. C.

C. 1958-A. These charges are as shown in my Exhibit Number 3, which has already been explained.

The accuracy of the rules and regulations, as set out in the complaint, are admitted in the answer of the Nashville, Chattanooga & St. Louis Railway. This defendant, however, denies that these rates and rules are unreasonable or discriminatory, and as the same allegations are made with reference to the Louisville & Nashville Railroad and with reference to the Nashville, Chattanooga & St. Louis Railway, this feature will be discussed later in its application to all three of the lines.

The Nashville, Chattanooga & St. Louis neither admits nor denies that Rule 5, quoted on pages 16 and 17

of the petition, gives undue or unreasonable preference to carload grain traffic, but merely states that this rule has been canceled by amendment to said tariff, said amendment being 9th revised page 44, effective January 25, 1914, so that the question of discrimination no longer remains with respect to this particular rule.

As to the revised rule applicable to switching coal reaching Nashville via the Tennessee Central Railroad, the tariff has been amended and the Nashville, Chatta-

nooga & St. Louis will now switch non-competitive
coal from the Tennessee Central Railroad at \$3.00
per car, but for reasons just given with reference
to the Louisville & Nashville Railroad Tariff that does
not seem to be a strict compliance with the order of the
Interstate Commerce Commission, in Case Number 4604,
in that the order of the Commission made no distinc-

tion between competitive and non-competitive coal.

The Nashville, Chattanooga & St. Louis Railway's answer also states the Rule 8, quoted on page 17 of the petition, which shows the competitive switching charges set

out in my Exhibit Number 3, has been canceled.

This is a fact, but, as previously explained, the traffic reaching Nashville and forwarded from Nashville via the Tennessee Central Railroad, to and from industries located on the individual terminals of the Nashville, Chattanooga & St. Louis Railway, is now subjected to even higher charges, as published by the Louisville & Nashville Railroad, and set out in my Exhibit Number 2, which are even higher than the old rates of the Nashville, Chattanooga & St. Louis Railroad.

Paragraph 9 of the complaint quotes the rule of the Nashville, Chattanooga & St. Louis Railway, authorizing the absorption of the switching charge of \$2.00 per car on all competitive grain, inbound and outbound, to

229 and from the Hermitage elevator.

The accuracy of this rule is admitted in the answer of this defendant, but that this absorption gives any undue and unreasonable preference and advantage to carload competitive grain traffic to and from the Hermitage elevator, or that it constitutes discrimination, is denied, the Nashville, Chattanooga & St. Louis further stating that it would be willing to make like absorptions on grain traffic in carloads, when consigned to or forwarded from other elevators on the tracks of the Nashville Terminal Company, were other elevators in existence.

Why this absorption should be confined to grain traffic, in the first place, it is not clear to me. Furthermore,

as shown here this morning, there are other elevators on the terminals of the Tennessee Central Railroad, the Mc-Lemore-Crutcher Elevator, being in practically the same business as the Hermitage Elevator, the shelling business. They are not as large, but they are a terminal elevator and in active competition with the Hermitage Elevator. The Nashville, Chattanooga & St. Louis Railway do not absorb \$2.00 or any other amount on any traffic except this competitive grain traffic to and from the Her-

mitage Elevator, and the fact that they are willing 230 to do so does not remove the discrimination, nor does it remove the prejudice and disadvantage to which other industries and other traffic is subjected until they actually do for these other industries and for this other competitive traffic what they are now doing for competitive grain traffic to and from the Hermitage Elevator.

The accuracy of the terminal conditions and practices, as set out in paragraph 10 of the complaint, are admitted by both the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and in this paragraph 10 the Louisville & Nashville Railroad admit that freight destined to or forwarded from Nashville by way of the Tennessee Central Railroad is subjected to the switching charges set out in paragraphs 7 and 8 of the complaint. They deny, however, that those charges are unreasonable or discriminatory, and I will take that up later in connection with all three lines.

Now both the Nashville, Chattanooga & St. Louis and the Louisville & Nashville, however, admit that the Louisville & Nashville Railroad has individually owned tracks. switches and terminal facilities, and that the Nashville, Chattanooga & St. Louis Railway has individually owned

switches, tracks and terminal facilities within the terminal limits of Nashville, Tennessee, and the 231 unreasonableness of the rates and discriminations created thereby will be discussed later in connection with its application to the rates and rules of the three defendants in this case.

Paragraph 11 of the complaint alleges that the switching rates, rules and regulations and the discriminations created thereby, as described in paragraphs 6, 7, 8, 9 and 10, were established and made by mutal agreement and concert of action by and between and among respondents. Louisville & Nashville Railroad Company, Louisville & Nashville Terminal Company and Nashville, Chattanooga & St. Louis Railway, which allegation is denied, although the answers of the defendants, themselves, are, in my opinion, a practical admission that this charge is cor-

rect, as these various leases and contracts between the three defendants could not have possibly been made except by mutual agreement and concert of action, and the answer of the Louisville & Nashville Railroad Company, in paragraph 5 distinctly admits that the kinship between the Louisville & Nashville Railroad and the Nashville. Chattanooga & St. Louis Railway, growing out of the fact that the Louisville & Nashville Railroad owns a majority

of the stock of the Nashville, Chattanooga & St ... Louis Railway, was one of the causes inducing the

formation of the arrangement for operating terminals at Nashville, set out in paragraph 10 of the complaint. They were, it seems to me, bound to have been mutually satisfactory and agreeable or they would not have been made. If not made that way, the only other way it could have been done was for the Louisville & Nashville to force it upon the Nashville, Chattanooga & St. Louis, so I think one or the other of those conditions is bound to be true.

Mr. Commissioner, we gave notice to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, on March 17th that we would call on these lines to produce here copies of the Nashville, Chattanooga & St. Louis routing circular, dated September 1, 1906, issued under Nashville, Chattanooga & St. Louis Railroad Company's file Number 17104, and a corresponding circular issued by the Louisville & Nashville Railroad Company. Nashville, Chattanooga & St. Louis circular number is 2142-A. I have only one copy and it will be practically impossible to reproduce it. Will those circulars be admitted?

Commissioner Meyer: Mr. Henderson, just what is the connection between that and the matters you wish to

bring to the attention of the Commission?

Mr. Henderson: That is the circular which 233 shows by maps, keys and other instructions the division of practically the entire United States relative to-

Commissioner Meyer (interrupting): I am familiar

with that, Mr. Henderson.

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Mr. Henderson: That was introduced simply to show that not only in these particular rules, but practically everything, there is a concerted action on the part of the Louisville & Nashvile Railroad and the Nashville, Chattanooga & St. Louis Railway, which we charge in this complaint-merely one other proof of it.

Commissioner Meyer: Well, you do not care for the purposes of this proceeding, to go into the terms of that understanding and the suggestions contained in the circular that you hold in your hands?

Mr. Henderson: No, sir; I have no remarks to make about it. It speaks for itself, and I would like to file this

one copy, if the railroads are not going to file it.

Mr. Jouett: Well, Mr. Commissioner, I have a similar statement that was issued by the Louisville & Nashville Railroad, that is, the one that corresponds to the one

of the Nashville, Chattanooga & St. Louis Rail234 way, and there is no disposition on the part of the
Louisville & Nashville Railroad to withhold this
from the Commission, and we would be perfectly willing
to present it for your examination, but as a matter of evidence here we consider it wholly incompetent. This is a
hearing for the determination of the propriety of switching practices at Nashville. The paper we have relates
to certain routing arrangements and soliciting arrangements covering shipments to other points.

Commissioner Meyer: Well, that is why I asked Mr.

Henderson that question.

Mr. Jouett: Yes.

Commissioner Meyer: I wanted to understand it from his point of view he thought we ought to go into those things in this proceeding. Now, do you think that is essential and necessary in this case, Mr. Henderson?

Mr. Henderson: The charge is made in this complaint as to concerted action between the roads with respect to Nashville switching. That has been denied. Now, we think that this circular does throw some light on that particular feature and not as to the switching rules, or the reasonableness of them or the reasons that they were made.

Mr. Jouett: The only charge is that the Louisville & Nashville controls the Nashville, Chattanooga & St. Louis. This paper, if it has any mean-

ing, relates, it will be claimed, and it may be claimed, to a division of the territory, perhaps to a violation of the anti-trust Act. I am just considering what I have seen in the papers, and I assume that the other side will contend for if it ever comes up for investigation, but it is wholly irrelevant for this hearing.

Commissioner Meyer: Might it not be understood, Mr. Henderson, that if at any point it becomes important in this proceeding, from your point of view, to refer to this circular, or allied circulars, that may be done, but not introduce it at this point and possibly open the cross-examination upon that circular. In another proceeding that matter will probably be brought up, but it is not clear

to me why at this point we should go into that feature of the general investigation.

Mr. Henderson: It was not my desire or intention to go into the circular on the merits of it at all, Mr. Commissioner. It was simply, I thought it threw some light on the control, and the possible control, of the Nashville,

Chattanooga & St. Louis that we had charged in

236 this complaint, and which has been denied.

Commissioner Meyer: Now, as to the intercorporate relations of the companies, the Commission has information, and it so happens that the Commission does have information in regard to all those matters, and you realize if we would go into that it would take some time. The carriers would want to make their explanation, you would want to ask them questions, and I am not clear that it would assist in this present proceeding.

Mr. Jouett: That is it: when the time comes we ex-

pect to justify that fully.

Commissioner Mever: Not having been advised that you would have a copy, and not having been advised that the carriers would bring copies, I have copies of all of those documents right here.

Mr. Jouett: Everybody is ready.

Mr. Henderson: If it is admitted that those circulars

are in effect, that is all I want.

Commissioner Meyer: And for your information, Mr. Henderson, as well as these gentlemen here, I have read them all.

Mr. Henderson: That is all that is necessary.

Commissioner Meyer: It will be satisfactory to you, Mr. Henderson, not to introduce this circular? 237 Mr. Henderson: Yes, sir; I will not introduce that.

Commissioner Meyer: Very well.

Mr. Henderson: Paragraph 12 of the complaint sets out the switching rates and rules as published by the Tennessee Central Railroad, and the accuracy of these rules is admitted in the answer of this defendant; the Tennessee Central Railroad denying, however, that the switching charge of \$3.00 on non-competitive carload freight is unreasonable, and since the complaint was filed the switching tariff of the Tennessee Central Railroad has been corrected in compliance with the order of the Interstate Commerce Commission in I. C. C. Docket Number 4604, and this defendant now switches non-competitive coal reaching Nashville via the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis

Railway at \$3.00 per car, the same as other non-competitive traffic.

The unreasonableness of the \$3.00 charge will be taken

up later on in its application to all of the lines.

Paragraph 13 of the petition sets out other switching charges of the Tennessee Central Railroad, as published in its I. C. C. Number A-274, the accuracy of the rules being admitted in the answer of the Tennessee Central

Railroad, but it denies that the fact that this company switches competitive and non-competitive

grain traffic to and from the Hermitage Elevator for \$2.00 per car, while charging \$3.00 per car on other non-competitive traffic to and from other industries, and the competitive switching charges, as shown in my Exhibit Number 4 on all other competitive traffic to and from all other industries, gives undue or unreasonable perference to the grain traffic to and from the Hermitage Elevator and to the elevator itself, and subjects all other carload freight traffic to and from all other industries to undue and unreasonable prejudice and disadvantage in violation of the Act to Regulate Commerce.

It is admitted by the Tennessee Central Railroad that the service is performed for this particular industry at a less charge than that made to all other industries.

There are other industries on the terminals of the Tennessee Central Railroad, intermediate between Baxter Heights and Hermitage Elevator, and to these industries where the switching service is less than that performed in handling grain to the Hermitage Elevator, the switching charge is \$3.00 per car on non-competitive traffic and on competitive freight, the charge ranges from \$5.00 to \$36.00 per car, according to the commodity.

239 In my opinion, this is certainly a discrimination.

However, this matter will have to be decided by
the Commission. The facts are admitted and it is a ques-

tion for argument and not for proof.

The Tennessee Central Railroad, in its answer, states that it does not undertake to justify the reasonableness of 60 cents per ton for switching coal, and, as previously charges, this charge has been canceled, and non-competitive coal is now switched for \$3.00 per car the same as charged for other non-competitive traffic.

Paragraph 14 of the complaint sets out the switching charges of the Tennessee Central Railroad on competitive traffic, which charges were explained in connection with my Exhibit Number 4, and the accuracy of these

rates is admitted in the answer of the Tennessee Central Railroad.

This defendant states, in its answer, that it does not undertake to justify the reasonableness of these rates.

Paragraph 15 alleges that physical connections now exist between all of respondents' lines, terminal yards and tracks at points within what is known as the switching limits of Nashville, and that it is possible and prac-

tical to interchange without restriction carload 240 freight traffic over the various lines, terminal yards or tracks of one respondent to the line, terminal yards or tracks of any other of said respondents by

switching movement or service.

The correctness of this allegation is admitted in the answer of the Tennessee Central Railroad to this com-

plaint.

The Louisville & Nashville Railroad, in its answer, and the Nashville, Chattanooga & St. Louis Railway, in its answer, both admit that physical connections exist, as stated in paragraph 15 of the complaint, but these two defendants deny that it is possible or practical to interchange without restrictions carload freight traffic from the lines, terminal yards or tracks of one defendant to the lines, terminal yards or tracks of any other of said defendants by switching movement or service. It is admitted, however, that it is a fact that physical connections do exist. That is admitted by all of the defendants.

It is also an admitted fact, and is shown by the terminal tariffs themselves, that non-competitive freight is interchanged between the Tennessee Central and the other defendants at \$3.00 per car, and that competitive freight is interchanged at the competitive switching rates

that I have filed as my Exhibits 2, 3 and 4, the cor-241 rectness of those rates having been admitted in the answer of the defendants.

Mr. Jouett: Where is that admitted?

Mr. Henderson: I made an error; I am going to change that. I am going to put it this way: it is admitted that the charge for interchanging non-competitive freight is \$3.00 per car, and it is also admitted that the charge for interchanging competitive freight are those rates shown in Exhibits 2, 3 and 4 to my testimony.

Mr. Jouett: Where is that admitted, that last state-

ment?

Mr. Henderson: In paragraph 6 you admit the quotations of the switching rules as correctly copied in paragraph 6 of the petition, except Rule 9, which you amended, and which amendment we accepted.

In paragraph 7 you deny the existence of all competitive rates in paragraph 10, and you admit that freight by way of the Tennessee Central Railroad is subjected to the charges set out in paragraph 7, or 8, of the complaint. That is on page 6 of your answer, and the answer to paragraph 10.

Mr. Gwathmey: Mr. Henderson, I want to call your attention to the fact that the complaint alleges that there

is now no published tariff which could apply on interchange competitive traffic from the tracks of the Nashville, Chattanooga & St. Louis Railway.

Mr. Henderson: The charges of the Louisville & Nashville Railroad would apply as published as applicable to every industry in Nashville.

Mr. Gwathmey: That is your contention?
Mr. Henderson: The tariff speaks for itself.

Mr. Jouett: We desire to reserve an objection to so much as undertakes to state the witness' conclusions as to the meaning of the pleadings of the defendants, and in order that we may not be understood as letting pass undenied his statements as conclusions that we have made certain admissions. In other words, we think that the pleadings should speak for themselves. I just want to save that question.

Commissioner Meyer: Well, the record will now show that

Mr. Henderson: I think we had better stop there, and we will come in here again at 7:30, and please take 7:30 to mean 150 minutes after 5.

Whereupon at 5 o'clock P. M. a recess was taken until 7:30 P. M. of the same day.

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EVENING SESSION.

7:30 P. M.

Commissioner Meyer: Are we ready to continue? Mr. Henderson: I am ready. Commissioner Meyer: Proceed, Mr. Henderson. T. M. Henderson resumed the stand.

DIRECT EXAMINATION (CONTINUED).

Mr. Henderson: I was discussing the charge in the complaint that it was practicable to interchange freight without restriction between these lines by switching movement. Now the freight is actually interchanged on these competitive and non-competitive rates, as the case may be, and the fact that the competitive switching rates are so high certainly does not affect the track connec-

tions or the practicability of making interchange, and my construction of the answer to this complaint by all the defendants is a practical admission that it is practicable to interchange without restriction all carload freight traffic between the terminals of the three defendants.

Paragraph 16 quotes the order of the Interstate Commerce Commission in the case of the Traffic Bureau of Nashville vs. Louisville & Nashville Railroad, et al., I. C. C. Docket Number 4604, and the answers of all of the defendants admit the accuracy of the order, and it is a fact that the tariffs of the three defendants have been corrected in partial compliance with this order, and now permit the switching of non-competitive coal at \$3.00 per car. However, the order of the Commission makes no distinction between competitive and non-competitive coal, and, in my opinion, this order has not been fully complied with by any of the defendants.

It is alleged in the complaint that the \$3.00 switching charge of all of the defendants on non-competitive traffic is unreasonable and the competitive charges of all of the defendants are unreasonably high in and of themselves and relatively so, and discriminatory in violation of Sec-

tions 1 and 3 of the Act.

I would like to file here a blue print map of the terminals of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway, showing the terminal situation here prior to the operation, or the beginning of the operation of the Louisville & Nashville Terminal Company.

Mr. Jouett: The Louisville & Nashville Terminal Company, you know, never operated. Do you mean

this joint arrangement?

Mr. Henderson: The joint arrangement was organized and incorporated as the Louisville & Nashville Terminal Company. That is the only name that I know it by, except that I do know the railroads themselves call it the Nashville Terminals. It is the joint property, though, of the Louisville & Nashville, and the joint facilities which have been pooled by the Louisville & Nashville and Nashville, Chattanooga & St. Louis.

Mr. Stokes: The Nashville Terminal is the corporate name of the terminal used by the Nashville, Chattanooga & St. Louis Railway: that is the name, the Nashville Ter-

minal.

Mr. Henderson: I understand that, and that is so stated in the complaint.

Now the Louisville & Nashville Railroad and the

Nashville, Chattanooga & St. Louis Railway do call the terminals at Nashville Nashville Terminals, not the Nashville Terminal Company. That is their way of speaking of it and the way I believe it is shown in the switching tariffs, but this map gives the situation before the organization of the Louisville & Nashville Terminal Company, as I understand it.

Mr. Jouett: You mean the Nashville Terminals or the corporation that owned the Union Station?

Mr. Henderson: No, sir; the Nashville Terminals are nothing more nor less, as I understand it, than a name given by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway to their joint terminal facilities.

Mr. Jouett: All right.

Mr. Henderson: Now the corporate name of the Tennessee Central facilities in Nashville is the Nashville Terminal Company.

Mr. Jouett: I beg your pardon.

Mr. Henderson: This map shows the situation here prior to the beginning of the joint operation of the terminal by the Louisville & Nashville and Nashville, Chattanooga & St. Louis, when they were operated separately. That is Exhibit Number 11, I believe.

(The blue print, so offered and identified, was received in evidence and thereupon marked Complainants' Exhibit 11, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

Mr. Henderson: Now at the time the terminal situation was as shown by that map the switching charge

between the Louisville & Nashville and Nashville, Chattanooga & St. Louis was \$2.00 a car on all freight.

That map of the Nashville Terminal Company, printed by the Tennessee Central Railroad, that I filed as Exhibit Number 1, I would like to explain there that that map, I think, was printed about 1900, and there are probably other industries now located on those terminals that do not appear on that map.

It shows the line of the Louisville & Nashville and Nashville, Chattanooga & St. Louis and the Louisville & Nashville Terminal Company in Nashville, but does not show the locations of the various industries on that ter-

minal.

Commissioner Meyer: What is supposed to the date of this map which you have introduced as Exhibit 11?

Mr. Henderson: That was some time prior to the organization of the Louisville & Nashville Terminal Company.

Commissioner Meyer: And that was in 1903, was it

not?

Mr. Henderson: No; 1906, I believe it was, Mr. Commissioner, according to the answers of these defendants. I do not know the exact date of that map; it was some time, though, prior, as I understand it, to the lease of the

Louisville & Nashville Terminal Company to the Louisville & Nashville and Nashville, Chattanooga 248 & St. Louis Railway which, I believe, according to

this, was July 1, 1906.

Now I will file as Exhibit Number 12-

Mr. De Bow (interrupting): Mr. Henderson, at the time this map was drawn it shows two car tracks on Broad Street, and it shows the terminal station there, and it shows the old Nashville, Chattanooga & St. Louis depot down on Church Street.

Mr. Henderson: I said this map was the situation here before there was any joint arrangement, as I under-

stand it.

Mr. DeBow: Was that after the terminal depot was built?

Mr. Henderson: No; that was prior to that time.

Mr. De Bow: And does this show the correct situation then at that time?

Mr. Henderson: This map was made by Mr. W. H. Lyle. Mr. Lyle, I believe, is recognized as a civil engineer and surveyor, and so far as I know it is correct. I have no information personally about the situation at that time other than this map.

You do not know then whether this Mr. De Bow:

map is correct or not?

Mr. Henderson: Only Mr. Lyle made it, and I un-249 derstand he is a recognized surveyor and civil engineer.

I might explain that that this map was introduced in the Nashville coal case as an exhibit in that case, was gotten up by Mr. Lyle for that purpose. At that time in that case it was not questioned, and I naturally assumed that it was correct; it was introduced and accepted by all the parties as being correct at that time.

Mr. De Bow: Mr. Henderson, do you not know that prior to the time that the Louisville & Nashville Terminals were in operation that there was but one track on the Broad Street, and does not this map now that you show, on its fact, show that it must have been done after 1899?

Mr. Henderson: Well, no.

Mr. De Bow: Does not this map show that the terminal station there is in existence and the two well de-

fined tracks on the Broad Street?

Mr. Henderson: As I explained before, Mr. De Bow, the map was prepared by Mr. Lyle for use in the Nashville coal case. Now it was introduced in that case and was not questioned. I therefore assumed that it was correct or it would have been questioned in those proceedings two years ago.

Mr. De Bow: You know nothing about the accu-

racy of the map of your own knowledge?

Mr. Henderson: I am not a civil engineer or

surveyor.

Mr. De Bow: I mean you do not know anything about the situation at that time irrespective of the accuracy of

the map?

Mr. Henderson: I was not living in Nashville at the time and had never been here and personally know absosolutely nothing about the situation; I am going entirely by the map which, as I stated before, was accepted as correct in the Nashville coal case. This was made at that time and was introduced in that case and was not questioned by anybody.

Mr. De Bow: Now take this track of the Tennessee & Alabama Railroad that is shown there from the intersection of the Nashville, Chattanooga & St. Louis, running on down here to Broad Street, way on down into the

heart of the city, is it not?

Mr. Henderson: Yes, sir; that goes into Broad Street

Mr. De Bow (interrupting): Do you not know as a matter of fact that track itself has not been in existence in the city of Nashville for 20 or 30 years?

Mr. Henderson: No; I do not know whether it has

been in existence or not. This is an old map.

Mr. De Bow: Is not this a conglomeration of the

251 old map and the present map?

Mr. Henderson: My information is that it is not; I did not know the map and I could not tell you to save my life whether it is correct or not. It was prepared and filed in the other case and was not questioned in that case, and I presumed that it was correct.

Commissioner Meyer: Let me make this suggestion, that before we resume tomorrow morning perhaps the

witness can inquire of the engineer who made this as to what date he intended to make it.

Mr. De Bow: And if it is not accurate on that date

we want to correct it.

Commissioner Meyer: But if you, Mr. De Bow, consider it inaccurate, you can, with your own witness, point out wherein it is not correct, because the present witness

states he does not know anything about it.

Mr. Henderson: I will be very glad to get Mr. Lyle, if I can locate him, and get him to come up here and explain the map. He will undertake to have Mr. Lyle up here tomorrow to explain the map, if he is in the city and can be located.

Commissioner Meyer: Very well. You may proceed,

Mr. Henderson.

252 Mr. Jouett: We desire to object to the introduction of this Exhibit 12 as incompetent, irrelevant and immaterial. I do not know whether this witness can testify of his own knowledge what these rates are, but on the ground named earlier in the hearing today we insist that the switching charges in other towns is a matter that is wholly collateral, and the Commissioner can see how impossible it would be to have a hearing as to the merits of each one of these towns. He now presents a list of a number of places with the switching charge of each place. That throws no light upon what should be a reasonable switching charge in Nashville. The distances may not be one-third as great, the moves may not be one-half as many. The conditions are necessarily so different that it seems wholly collateral and irrelevant. We are put to the disadvantage of not being able to meet this, and we would be compelled, if that were considered competent evidence, to ransack the terminal tariffs and get another list where they run up to 4, 5, 6, 7, 8, 9 and 10 dollars, as the Commission I think knows, in many places in the country. We have no fear upon balancing up how the figures would show, but we just think it is imcompetent evidence.

Commissioner Meyer: These are compilations from the tariffs and subject to the limitations which are inherent to calculations of that kind. I do not see why they should not be received with the understanding which you have just expressed. It is impossible for us to go into the reasonableness of switching charges in many different localities, but these are compilations, and for what they may be worth it seems to me they might be received.

Mr. Jouett: They are taken from terminal tariffs, I presume, are they?

Mr. Henderson: The tariff authority is shown for every rate there.

Mr. Jouett: Well, strictly speaking, they are already

on file with the Commission, every one of them.

Commissioner Meyer: They are, and this kind of information is always pertinent, and you realize that if the switching charge in a particular locality, for instance, was greatly out of line with the switching charges in many other localities that that fact might require some explanation; but it would not go into the reasonableness, necessarily, of a switching charge in all those other localities.

Mr. Gwathmey: In order that the record may call the matter to the Commission's attention in the event we check this statement, I will state that the statement appears on its face to be plainly inaccurate; my information being that switching charges at Atlanta, for example, range from charges as low as \$2.00 a car to charges of as much as \$5.00 a car, depending on the location of the industry.

Mr. Henderson: Have you the Nashville, Chattanooga & St. Louis switching charge at Atlanta showing

that information?

Mr. Gwathmey: No; I have not; I am simply noting that in the record so the Commission can investigate it.

Mr. Henderson: These figures, Mr. Commissioner, are taken from the tariffs, and so far as I know, and my intention was to get them exactly as they are in the tariff -it would be no advantage to me to show a lot of stuff here that is not in the tariff, because I have to show the authority and it is open to check and no doubt will be checked.

Commissioner Meyer: I think this calls the possibility of a different rate at Atlanta to the attention of the Commission and the tariff will show and they are on

file with the Commission.

Mr. Henderson: The tariffs will show whether there is any difference or not. I think there are some 255 Atlanta Terminal Tariffs that do make different rates.

Commissioner Meyer: Of course you realize all comparisons are dependent largely, if not entirely, upon the

similarity of conditions.

Mr. Henderson: Certainly. I merely want to state there, though, that the Nashville, Chattanooga & St. Louis Tariff which I show as authority for that \$2.00 is, I think, a rate of \$2.00 straight; that is my recollection; that is

the way I got it. If that is wrong, of course, it is subject to correction.

Commissioner Meyer: Mr. Gwathmey may have in mind the switching tariff of another carrier serving Atlanta

Mr. Gwathmey: No; but my-

Commissioner Meyer (interrupting): Well the tariffs will show it.

Mr. Jouett: Yes; the tariffs will show it.

Commissioner Meyer: So I do not think we need to

spend any more time on this.

Mr. Henderson: That exhibit there shows the charges at Nashville on non-competitive and competitive freight.

Mr. Stokes: Mr. Commissioner, I desire to introduce another objection to that, and that is until the petitioners in this case have shown that conditions at

tioners in this case have shown that conditions at these other points are similar to the conditions at Nashville that that is absolutely irrelevant and incompetent. I desire to put that objection in; the first thing is, he must show the conditions in these other places are similar to Nashville.

Commissioner Meyer: I think we all understand the limitations in matters of this kind, and they appear upon

the record.

Mr. Henderson: May I explain that exhibit now, Mr. Commissioner?

Mr. Commissioner Meyer: Proceed.

Mr. Henderson: I will file Exhibit No. 12.

(The document in question was received in evidence and thereupon marked Complainants' Exhibit No. 12, received in evidence March 25, 1914, and is attached hereto.) 196 CITY OF NASHVILLE, ET AL., V. L. & N. B. B. CO., ET AL.

(COPY)

Complainants' Exhibit No. 12.

CITY OF NASHVILLE, ET AL.,

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.,

I. C. C. Docket No. 6484

Witness, Henderson.

STATEMENT SHOWING SWITCHING CHARGES AT NASHVILLE, TENNESSEE, AS COMPARED WITH SWITCHING CHARGES AT OTHER POINTS SERVED BY THE LOUISVILLE & NASHVILLE R. R., NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y AND (OR) THE TENNESSEE CENTRAL RAILROAD.

Charges at					Pe	r Car
- Lenn			itive fre			
			freight	\$5.00	to	36.00
Atlanta, Ga	All F	reight.				2.00
Delleville, III		4.1				-
Birmingham, Ala	66	4.4				2.00
Chattanooga, Tenn .	66	4.4		0.00		2.00
Decatur, Ala		4.4		2.00	to	3.00
Evansville, Ind	4.6	4.4	• • • • • •			1.00
Harriman, Tenn	4.6	"	• • • • • • •			2.00
Handerson V-	66					2.00
Henderson, Ky						2.00
Knoxville, Tenn	• • •					2.00
Lexington, Ky	. 66	"		1.00	to	3.00
Memphis, Tenn	6.6	4.6				2.00
Mobile, Ala	6.6	4.4				2.00
Montgomery, Ala	66	4.4				
New Orleans, La	66	11				2.00
Owensboro, Ky	6.6	4.4	• • • • • • •			2.00
Paducah, Ky	44	4.4	• • • • • •			2.00
tadadan, ity						2.00

TARIFF AUTHORITIES:

Nashville, Tenn.	Tennessee Central R. R. I. C. C. No. A-274 and A-323 Nashville, Chattanooga & St. Louis R'y I. C. C. No. 1958-A Louisville & Nashville R. R. I. C. C. No. A-12658 and A-11500
Atlanta, Ga.	Nashville, Chattanooga & St. Louis
Belleville, Ill. Birmingham, Ala.	R'y I. C. C. No. 1958-A Louisville & Nashville R. R. I. C. C. No. A-12658

Chattanooga, Tenn.

Harriman, Tenn.

Henderson, Ky. Knoxville, Tenn. Lexington, Ky.

Memphis, Tenn.

Mobile, Ala. Montgomery, Ala. New Orleans, La. Owensboro, Kv. Paducah, Ky.

(N. C. & St. L. R'y I. C. C. No. 1958-A Tennessee Central R. R. I. C. C.

No. A-274

L. & N. R. R. I. C. C. No. A-12658.

L. & N. R. R. I. C. C. No. A-12658 N. C. & St. L. R'y I. C. C. No. 1958-A

Louisville & Nashville R. R. I. C. C. No. A-12658

Nashville, Chattanooga & St. Louis R'v I. C. C. No. 1958-A

Mr. Henderson: The statement shows that the prevailing switching charges at these points noted, all of which are served by one or more of the Nashville lines, is about \$2.00 per car.

The charge of Decatur, Alabama, is \$1.00. Of course Decatur, Alabama, is a smaller town than Nashville and naturally the switching movement there would be less than it would be in the Nashville Terminals.

At Chattanooga the charges range from \$2.00 to \$3.00

and at Lexington, Kentucky, from \$1.00 to \$3.00.

Now the terminals at Nashville can not be very much more expensive, and the average switching 257 movement at Nashville could not be much, if anything, in excess of the average switching movement at such places as Atlanta, Georgia, Birmingham, Alabama, Chattanooga, Tennessee, and Memphis, Tennessee, and New Orleans, Louisiana. Those points all, with the exception of Chattanooga, I believe, are larger cities than Nashville, and the terminal limits there would be cer-

tainly as extensive as they are here.

I have never been over the terminals of the Louisville & Nashville or of the Nashville, Chattanooga & St. Louis at Nashville, but I have been over the Tennessee Central terminals, I think on every foot of track they have in Nashville, and there are some long trestles at different points, but there are no heavy grades or other expensive transportation conditions connected with the switching of freight to or from the industries located on the terminals of the Tennessee Central Railroad at Nashville. terminal tracks and facilities of the Louisville & Nashville and Nashville, Chattanooga & St. Louis are generally in very close proximity to those of the Tennessee Central, that is, particularly, down town. The Tennessee

Central does not go to East Nashville or to West 258 Nashville, but from my knowledge of the general situation I would say that the transportation conditions over the terminals of the Louisville & Nashville and Nashville, Chattanooga & St. Louis I should think would be about the same as they are over the Tennessee Central.

Now at Memphis, Tennessee, the Union Railway Company, which, I understand, is owned by the Missouri Pacific Railroad and the St. Louis, Iron Mountain & Southern Railway, furnishes terminal facilities for those lines at Memphis, operates a main line branch of 20.74 miles and sidings of 24.32 miles, making a total trackage operated in the city of Memphis of 45.06 miles. switching charge of the Union Railway Company of Memphis, as published in its I. C. C. Number 8, on all traffic, competitive and non-competitive, destined to or forwarded from Memphis by any line, is \$2.00 a car.

The Belt Line Railway at Chattanooga, Tennessee, averaging 49.48 miles of track, main line and sidings, performs switching to or from any industries on its terminals, whether competitive or non-competitive freight, regardless of how the shipment is routed to or from

Chattanooga at \$2.50 and \$3.00 per car.

259 The New Orleans Terminal Company performs switching at New Orleans, Louisiana, and operates 18.41 miles of main track and 46.96 miles of sidings, making a total trackage in the city of New Orleans of 65.37 miles. The switching at New Orleans was an average of about \$2.00 per car, regardless of the point of origin or contents of the car.

I think that varies in some instances, running from \$1.00 to maybe \$4.00, but the average is about \$2.00 and applies regardless of point of origin or contents of the

car.

The St. John's River Terminal Company at Jacksonville. Florida, which is owned by the Southern Railway and does switching for the Southern and other lines in Jacksonville, has a total trackage of 27.58 miles, and the switching charge of this company, under Southern Railway I. C. C. A-5575, is \$2.00 per car, applicable to competitive as well as non-competitive traffic, regardless of route shipments move into and out of Jacksonville.

Mr. Jouett: Mr. Henderson, are you speaking from the tariffs and the papers on file with the Commission or

from your own knowledge about these matters?

Mr. Henderson: I am speaking from the tariffs and from the information carried in Poor's Man-260 ual, showing the trackage.

Mr. Jouett: We desire to have it understood that we

object to all this evidence, Mr. Commissioner.

Commissioner Meyer: Well, the objection is entered

on the record and the witness may continue.

Mr. Henderson: That information is gotten up by me personally, Mr. Commissioner, from the tariffs and from Poor's Manual, which is recognized, I understand, as authority on those things.

Commissioner Meyer: In so far as these terminal companies are operating companies they would file separate reports with the Interstate Commerce Commission

in which all these facts will appear.

Mr. Henderson: I don't know whether they all file tariffs and reports or not. Some of them are operated by the railroad, as the Nashville Terminal Company is operated here by the Tennessee Central. I think the St. John's River Terminal Company is operated by the Southern Railway. That is my recollection. Whether they make a report to the Commission I could not sav.

I was located in Jacksonville, Florida, for about 14 months in the traffic department of the Atlantic Coast Line Railroad. I never had occasion to go

261 over the entire terminals of the St. John's River Terminal Company, but from my general knowledge of the situation at that time and from what I did see of the terminals, the switching movement there for the Atlantic Coast Line was in a number of instances greater than the average switching movement as shown here today over the Louisville & Nashville or the Tennessee Central. I know the Atlantic Coast Line did have a substation that they called their Naval Stores station, and there was a good deal of business switched from the main yards to this Naval Stores station and the distance was, I think I am safe in saving, fully 4 miles.

I have here a certified copy of the testimony of Mr. E. E. Williamson in I. C. C. Docket Number 5860, which

I will file as my Exhibit Number 13.

Mr. Jouett: We desire to object to that. I do not know what it can be, but no witness ought to be introduced that we do not have the right to cross-examine and know something about his testimony.

Commissioner Meyer: Were these carriers parties

to that case, Mr. Henderson?

Mr. Henderson: Sir!

262Commissioner Meyer: What carriers were parties to the case to which you now refer?

Mr. Henderson: Why, I do not know; it was in the advance rate case about the spotting of cars. This is a certified copy of a document already on file with the Commission, and we think we have a right to introduce it in this case.

Commissioner Meyer: You mean in the present socalled advance rate case, the testimony recently taken before the Commission?

Mr. Henderson: Yes, sir; this testimony was taken

on February 27 and 28 of this year.

Mr. Jouett: The objection, Mr. Commissioner, is that this is the first we have ever heard of that or know of it, and certainly no testimony of any witness in another case, where the issues were not the same and where the parties were not the same, could be relevant in this case or could be competent for any purpose in this case. It would violate every known rule of evidence. I am sure I do not have to more than remind the Commissioner of that fact. I have no idea what is in that, but suppose the witness has testified to things in there that would be

damaging in this case—I suppose it would be help-

263 ful to him or he would not put it in.

Commissioner Meyer: I do not think you need argue that. Suppose you leave that in abeyance for a while, Mr. Henderson, if there is objection. You will see these defendants have no opportunity to ask any witness whose testimony you desire to introduce any questions, and I am afraid the limitations of that testimony would be so great it would not be of much value to you if you

should put it in.

Mr. Henderson: That, as I said, is a certified copy of a record now before the Commission. Mr. Williams was cross-examined at that time, and it shows his direct examination and cross-examination. I recognize I could not offer that testimony in this case without having a copy of it, and did secure a certified copy, and thought under the rules I would be permitted to introduce it for what it is worth. Of course, we could not add anything to it or take anything from it.

Commissioner Meyer: With the limitation you have just stated there is no objection to putting it in as an

exhibit. Put it in for what it is worth.

Mr. Henderson: That is what I expect to do.

Mr. Jouett: Mr. Commissioner, just a moment. 264 The trouble about that is the gross injustice it would be to us. If it is valuable for any purpose it is valuable for whatever it might show upon the face of it, and yet you can see how our hands are tied behind us with reference to that evidence, whatever it may be. Now the fact it is before the Commission in another case can not bring it before the Commission in this case for any purpose. I think the Commission has so held, and the courts. But proceeding in an orderly way, as we must, while I recognize the fact the Commission has broader rules of evidence—I understand that is the practice and I am not criticising the practice-but I am protesting against the evidence in another case of a witness about whose testimony we know nothing-how it could legally or properly or fairly or justly be brought into this case to affect our interests-because if it is not going to affect our interests, if it is not going to prove something that is valuable to him, as to which we have no opportunity to meet it, no opportunity to cross-examine that witness and perhaps explain away many of the statements that go, perhaps, uncontradicted there, because it was not relevant to this case-

Commissioner Meyer (interrupting): I fully appre-

ciate that, Mr. Jouett.

265 Mr. Jouett: I am sure your Honor does.

Mr. Henderson: I understood the rule of the Commission, Mr. Commissioner, was that we could not refer to any other case unless the record was made a physical part of this record, but I did understand that we could put in as an exhibit the record in any other case before the Commission if we had the copies and furnished them to the other side and made it a physical part of the record. That is a certified copy of a document now before the Commission and, as I said before, I can neither add to it nor take from it. It goes in for what it is worth.

Commissioner Meyer: For illustrative and comparative purposes the facts contained in the pages of testimony which you are offering may doubtless be interesting. When it comes, however, to facts that will assist the Commission in determining these issues, you see that the Commission can not, in fairness, use it, for the reason that the defendants here were not parties to that case and had no opportunity to cross-examine witnesses. But, as you have just stated, you wish to introduce it for what it is worth. With the limits pointed out in the discussion here I think it should be received as an exhibit.

Mr. Gwathmey: Mr. Commissioner, under the rules of the Commission, as I understand them, even if this document is admitted for that pur-

pose, I understand the defendants should be furnished with copies of it.

Commissioner Meyer: The rules of the Commission

do so provide.

Mr. Henderson: I have copies here for everybody.

Will I be permitted to introduce that?

Commissioner Meyer: You may be permitted to introduce that subject to the limitations pointed out in the discussion.

Mr. Jouett: May I ask who is the witness?

Mr. Henderson: E. E. Williamson of Washington, D. C.

Mr. Jouett: It does appear to me if they want this testimony, if it is important, they should take his deposition. We are willing to adjourn the hearing, if the mat-

ter is important.

Commissioner Meyer: Suppose you let that matter rest until you have an opportunity to go over this evidence, and then if you deem it material no doubt the petitioners here would be perfectly willing to meet you any time to cross-examine the witness.

Mr. Jouett: We have no disposition to make any

captious objections.

Commissioner Meyer: That is satisfactory to you? Mr. Henderson: I suppose Mr. Williamson would be willing to give his deposition. Whether 267 we could go to Washington to take it is another matter.

Commissioner Meyer: It is satisfactory to you to subject Mr. Williamson to cross-examination on the part of these defendants with reference to his testimony?

Mr. Henderson: Certainly.

Commissioner Meyer: Personally, I did not hear that testimony, and I know nothing of the contents of what you are offering.

(The transcript of testimony, so identified and offered, was received in evidence and thereupon marked Complainants' Exhibit 13, Witness Henderson, received in evidence March 25, 1914, and is attached hereto.)

(COPY)

Exhibit No. 13.

STENOGRAPHER'S MINUTES BEFORE THE INTERSTATE COMMERCE COMMISSION DOCKET No. 5860.

Revenues of Rail Carriers in Official Classification Territory.

At Washington, D. C., Feb. 27-28, 1914. Also I. & S. Docket No. 333.

Testimony of Mr. E. E. Williamson. Hulse & Allen, Official Reporters, Whitford Bldg., Washington, D. C.

Commissioner Harlan: I think that would be desir-Have you some other information to give us as to the number of team tracks and private sidings?

Mr. Denig: There are about 400 within the city

That does not include the District.

Commissioner Harlan: Four hundred team tracks? Mr. Denig: Private owned side tracks.

Commissioner Harlan: How many team tracks?

Mr. Denig: I have not that information at this time. Mr. Brandeis: I think if Mr. Denig will file that information, as he suggests, that it will be very helpful.

Mr. Denig: I will be very glad to.

Mr. Brandeis: Mr. James is here representing Cincinnati.

Mr. James: I will call Mr. Williamson as to the general situation.

Mr. E. E. Williamson was called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. James: Please state the experience you have had in connection with the terminal situation at Cincinnati, O.

5996 Mr. Williamson: I was in the general office of the Queen & Crescent road at Cincinnati, O., for a period of

fourteen years. During that service I was brought in full contact with the switching and terminal situation there.

I was for eight years Commissioner of the Receivers and Shippers Association. I might say that that Association was formed primarily because of certain unsatisfactory terminal conditions and certain unsatisfactory switching charges, and that the Association was formed primarily for the purpose of straightening out some of

those unsatisfactory conditions.

While I was acting as Commissioner of the Receivers and Shippers Association I was also, a part of the time, Chairman of the Railroad and Terminal Committee of the

Business Men's Club.

I also served on the Railroad and Terminal Committee of the Chamber of Commerce and was at one time secretary of the Belt Line Committee, which Committee was formed to make a study of the general terminal conditions, with the idea of having the terminal facilities extended, and a belt line constructed.

Mr. James: The experience that you have had gave

you a

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thorough familiarity with the switching situation in and about Cincinnati?

Mr. Williamson: Reasonably so; yes.

Mr. James: Both as to team tracks and as to private side tracks?

Mr. Williamson: Yes, sir.

Mr. James: Can you tell us a little history of where the jobbing houses and manufacturing plants of Cincinnati were originally located with reference to the Ohio River and the Miami and Erie Canal and with reference to the railroads?

Mr. Williamson: Originally the jobbing warehouses and the manufacturing plants of Cincinnati were located with reference to the proximity of the Ohio River and also with reference to the proximity of the Miami and Erie Canal, which bisected the old city.

Mr. James: Describe in a general way the topography of Cincinnati and vicinity, indicating in a general way how the railroads approached the City of Cincinnati.

Mr. Williamson: I will introduce E. E. Williamson Exhibit No. 1, which is a panoramic view of the City of Cincinnati, as taken from the Kentucky side.

(The paper referred to was received in evidence, marked "E. E. Williamson Exhibit No. 1," and is for-

warded herewith.)

Mr. Williamson: In the background you will see the hills that surround the old part of the city. The old part of the city was built upon a plateau about 30 or 40 feet above the level of the river, and that plateau extended back to these hills that you see in the distance of 2 to $2\frac{1}{2}$ miles. The hills then rise abruptly, from 175 to 350 feet, so that the original city, located on this

plateau below the hills, had an area of about $3\frac{1}{2}$ to 4 square miles.

Mr. James: There is a sort of natural terrace from

the river on up to the hill-tops?

Mr. Williamson: From the river to the hill-tops; yes. Mr. James: If you have a topographical map of the city, introduce it and identify it as your Exhibit No. 2.

(The map referred to, received in evidence, was marked "E. E. Williamson Exhibit No. 2," and is for-

warded herewith.)

Mr. James: Explain briefly the topography as

shown.

Mr. Williamson: The country surrounding Cincinnati is very broken—very hilly. The railroads approach the city through various valleys. The Baltimore & Ohio Southwestern

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and the Big Four from the west approach along the river

bank below the hills.

The hills here, as indicated by the contours of the topographical map, rise up, as I said before, 175 to 350 feet. The railroad along the west part of this map, is skirting the foot of the hills, between the hills and the river.

The Cincinnati, Hamilton & Dayton road, and the Cleveland Division of the Big Four, and the Baltimore & Ohio Southwestern road from the east, approach the city through the Mill Creek Valley, Mill Creek being a stream running through the western portion of the city. Mill Creek Valley is all low land and is subject to overflow.

The Pennsylvania Railroad comes down the Little Miami Valley, and then skirting around the foot of a hill at the eastern end of the city which rises about 300 feet high. It then comes down to its terminal, skirting along the foot of the hill, between the foot of the hill and the

river.

Mr. James: Where the Little Miami enters the city, that is a part of the C., C., C. & St. L. R'y?

Mr. Williamson: Yes.

Mr. James: There is a very narrow strip between the river and the foot hills?

Mr. Williamson: A very narrow strip all along there.

Mr. James: Then in a general way, all the entrances into Cincinnati proper are down through the valleys or

along the river front, through the narrow channels which are accessible?

Mr. Williamson: Yes.

Mr. James: Take the road that runs out at Court Avenue, a branch of the Pennsylvania. What are the difficulties of transportation there in an outward movement?

Mr. Williamson: There is another road that I propose to call the attention of the Commission to. That is the C. L. & N. That is now owned or controlled by the Big Four, and is used jointly by the Norfolk & Western and the C. L. & N.

Mr. James: It goes up the Deer Creek Valley, does

it not?

Mr. Williamson: Yes. It has a 3 per cent maximum grade. I have seen two engines pushing five loaded cars up that grade. That will give you some idea of the difficulties surrounding the vicinity of Cincinnati.

Mr. James: As the commerce of Cincinnati grew, explain in a general way what took place in the way of relocation of jobbing warehouses and manufacturing plants.

If you have

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an exhibit in connection with that introduce it.

Mr. Williamson: I will introduce E. E. Williamson Exhibit No. 3.

(The paper referred to was received in evidence and marked "E. E. Williamson Exhibit No. 3," and is for-

warded herewith.)

Mr. Williamson: This is a topographical map of the City of Cincinnati and is the same as Exhibit No. 2, except that on Exhibit No. 3 I have delineated in colors the various railroads of Cincinnati and the extent of the Cincinnati switching limits, with the exception that the Big Four switching limits, as indicated by the letter B, extend to Lockland. I have shown with reference to that road the Cleveland Division, on out to its outer yards at Sharonville.

Owing to the location of the low lands and the high hills there were very few available sites down in the old city proper for manufacturing establishments adjacent to the railroad tracks. The west end of the city was very low and a great deal of that land had to be filled in.

Mr. James: That is the Mill Creek Valley?

Mr. Williamson: Mill Creek Valley; yes. It had to be filled in and on some of that filled land, the C., H. & D. was

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built, skirting the hills. There were some industries located there.

I might say that the annual floods of the Ohio River was a serious difficulty with which the commerce of Cincinnati had to contend, and the jobbing warehouses and manufacturing plants that have located with reference to the river had their business so interfered with by these floods that it became a necessity for them to seek other localities beyond the flood line if they were to continue in business and meet successfully the competition of other cities that were not similarly visited by floods.

Mr. James: With regard to the peculiar topography of Cincinnati and the manner in which the railroads entered the city, state what effect it had on the lack of economy in conducting business by reason of the necessity for drayage, because they could not have the side-

tracks.

Mr. Williamson: There was a necessity for the very

large amount of drayage done.

I might say that four or five years ago I made a comparison, and although the number of manufacturing establishments at Cincinnati was greater, and the variety of manufactures was greater in number than in the City of Indianapolis, yet

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owing to the peculiar topography, the low land and the inaccessibility of Cincinnati, there were fewer industries in Cincinnati having side-tracks connections at that time than at Indianapolis, Ind., Indianapolis being flat, and

the industries having direct connections.

I might say, however, that since there has been an extension of the switching limits of Cincinnati and since the industries have located in the outlying districts and opportunity was given for the commerce of the city, as it expanded, to get away from the congested districts and get into the outlying districts, that that has materially changed, so that today Cincinnati, by reason of the industries getting away from the congestion and locating in the outlying districts, there are now more firms in Cincinnati having side-track connections.

Mr. James: They had two alternatives: Either to leave Cincinnati entirely or go out into the suburbs?

Mr. Brandeis: Can you tell us how many industries in Cincinnati have side-tracks?

Mr. Williamson: I think there are 574. Mr. Brandeis: That have sidings now?

Mr. Williamson: That have sidings now; yes.

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Mr. Brandeis: Are you able to tell us what part of the total number of cars in and out of Cincinnati, loaded, are delivered to the side-tracks and what part to the pub-

Mr. Williamson: I have not that information, I did

not have time to prepare it.

Mr. James: Is there any other element in the matter of topography, for instance, the passenger train service -as to the passenger service interfering with the introduction of industrial tracks, and as to their utility in the old City of Cincinnati proper, in connection with the industries being compelled to seek the suburbs or seek another place?

Mr. Williamson: The passenger service, in-coming and out-going, through the congested district very materially interfered with the switching service to and from such industries as were located in the old part of

Cincinnati.

Mr. Brandeis: Mr. Williamson has a very wide acquaintance with traffic conditions in this country. Could he point out the difference between Cincinnati, Chicago and Detroit?

Mr. James: Let me get through with Cincinnati.

Mr. Brandeis: I thought that perhaps would be the most instructive way to do it.

Mr. Williamson: There being very few available locations down in the old city proper, the Baltimore & Ohio Southwestern arranged for the location of industrial section out at Norwood. That is indicated by the letter H, in the vicinity of Norwood.

Mr. James: That is a separate municipal corpora-

tion and is contiguous to the city.

Mr. Williamson: Yes, it is about ten miles out from the main depot and team tracks of the Baltimore & Ohio Southwestern in Cincinnati. There was land available there and the Industrial Department of the Baltimore & Ohio Southwestern arranged for the location of industries in that vicinity, to take the industries away from this congested district.

The Big Four, on the Cleveland Division, which is indicated by the yellow line from letters A to D-that line terminates at the letter D, at Ivorydale and from there on in it uses the tracks of the Baltimore & Ohio

Southwestern, under a trackage arrangement.

As the suburbs of Elmwood began to develop, and

out in the direction of Lockland, there were some industries located in

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that direction, the Big Four having very little space available, adjacent to its tracks for industries to locate

on its line down-town.

The Baltimore & Ohio Southwestern road, from Cincinnati Junction out for practically $4\frac{1}{2}$ to 5 miles, had its track laid on a very high hill in the Mill Creek Valley, paralleling Mill Creek. On the west side there was no opportunity for the location of any tracks because Mill Creek would overflow then. Immediately east of that was this very low land that overflowed, and it was not possible to locate industries along this tract covered by that stretch that I have just mentioned. That made it necessary for the industries to go out in the suburbs, as I have indicated, anywhere from seven and a half to ten to twelve miles.

Mr. James: Oakley is one of the more recent addi-

tions, is it not?

Mr. Williamson: Yes.

Commissioner Harlan: We seem to have a fair idea of the topography of Cincinnati and the position of these industrial sections. Let us have some details as to the spur-track situation.

Mr. James: Do the rates to and from Cincinnati ap-

ply from

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depots, team tracks, and private sidings within the Cincinnati switching limits, both carloads and less-than-carloads?

Mr. Williamson: They do, with very few exceptions. I might say, coming to the question that the Commissioner has asked, that recently the Big Four has extended its Cleveland Division outside yard, from the point marked D, which was about 8 miles from its downtown depot, out to Sharonville, the point marked A, being 17 miles from its down-town depot.

The Big Four switching limits extend from Lockland, O., the point marked B to the extreme west of the map.

to the point marked G at Cleves.

From its outside yard at Sharonville, the point marked A, down through the city and on down the river bed, is a total distance of 31 miles. The Cincinnati rates, coming from the north and east apply to Sharonville. They also apply to Cleves, O. For that 31 miles, including delivery at any point within the 31-mile stretch, the Cincinnati rates apply.

The switching limits of the Baltimore & Ohio Southwestern Railroad on the east, begin at Oakley, marked H on the map.

Commissioner Harlan: I think we can gather from

the map

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what the switching limits are. Let us have some details about the spur track situation.

Mr. James: I will ask him to give the private track situation and the team track situation and make a com-

parison.

Mr. Williamson: I can probably illustrate that in in this way. Take eight cars of lumber coming from some point in Michigan to various locations within the City of Cincinnati.

6009 We will assume that the lumber originates on the Michigan Central Railroad in Michigan. It comes down and is delivered to the Big Four at Toledo. It is then brought in over the Cleveland Division. The eight cars of lumber are broken up at this outside yard at Sharonville. One of these cars of lumber, we will say, will be placed upon the team track for delivery at Sharonville. Car No. 2 will be switched from the outside yard to point B, and put on the track of the Lockland Lumber Company or the Monroe Refrigerator Company-on their private sidings.

We will say that the car, in addition to being delivered

on the track, is placed at a particular point.

Car No. 3, is taken from the outside yard of the Big Four at Sharonville and brought to point C, which is at Arlington Heights, about a mile below Lockland. It is there put in on the track of a wood-working industry; it is put in on the track, a mere delivery is made and there is no particular placement at any exact location.

Car No. 4, is taken from the outside yard of the Big Four, brought to point D, which is the interchange point of the Big Four with the Norfolk & Western; the Norfolk & Western takes hold of the car and brings it over

to its

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Idlewild yard, and then switches it from that yard to the A. M. Kewin Lumber Company's plant on

the Norfolk & Western at point Y.

From the point of interchange of the Big Four and the Norfolk & Western, the distance is about five miles. That is the distance the Norfolk & Western hauls the car from point A, and the Big Four hauls it down to

point D, about eight and a half miles. Delivery is made on the side track of the A. M. Kewin Company at point Y from the Norfolk & Western. The Big Four, out of the Cincinnati rate, absorbs the Norfolk & Western Company's switching charge of \$3 per car.

Car No. 5 is taken from the outside yard of the Big Four; it is brought on down town and placed on its team track at point E, which is 17 miles from the breaking-up

vard.

Commissioner Harlan: And so on. You can get a placement for the distance of 31 miles there.

Mr. Williamson: Yes.

Commissioner Harlan: We understand that point.

Mr. Williamson: In the entire district of Cincinnati the rate will apply, and we have there a variety of service, and the rate into Cincinnati, say 15 cents or 13 cents, or

whatever it may be, from the Michigan point, will cover all those deliveries. Up to this time it has covered not only the delivery on the team tracks, but on a private siding that has included the particular place-

ment when required at a particular spot.

Mr. James: Would it have been possible for the carriers to have provided sufficient and convenient team track room in Cincinnati, or would it have been practicable from a transportation standpoint to have done so to accommodate these industries?

Mr. Williamson: It would not have been possible to

have done so.

Mr. James: If the carriers attempt to provide such team tracks, it would have come from the capital account of the carriers?

Mr. Williamson: Yes.

Mr. James: In providing these side tracks, that you have described at those various industries, they are usually provided for by the industry, the land being furnished and usually the tracks?

Mr. Wiliamson: In a great many instances, and I will say, as time goes on that the industries are paying

for

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the tracks instead of the railroads.

Mr. James: The carriers must maintain the team tracks at their expense?

Mr. Williamson: Yes, sir.

Mr. James: While private industries build and stand the expense of maintenance of private tracks? Mr. Williamson: Yes.

Mr. Brandeis: Can Mr. Williamson tell us how long the ferry on trap car service has existed in Cincinnati, and the extent of that service?

Mr. James: I think he could, but I would like to develop what I am trying to develop in an orderly way,

and not be broken into in the middle.

The carrier must pay taxes on the value of team tracks, while the industries pay the taxes on private sidings?

Mr. Williamson: Yes.

Mr. James: And, as has been described by another witness, the expense of policing and protecting the property on the team track is borne by the carrier, while on the private track it is borne by the shipper.

Mr. Williamson: Yes.

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Mr. James: The location of these industries in Cincinnati in the outlying parts has relieved the congestion which must have resulted from any attempt to carry on the industries in the old bottoms where they were formerly carried on?

Mr. Williamson: Yes.

Mr. James: In fact there would not have been enough room to have provided for them.

Mr. Williamson: There would not.

Mr. James: As this congestion is relieved, the carriers get a greater utility of the use of their equipment?

Mr. Williamson: Yes, they and they operate the entire terminal proposition more economically than if the industries had remained in the congested district.

Mr. James: Is the expense of soliciting business

also a factor in that equation?

Mr. Williamson: When an industry is located on a side track, it usually undertakes to give to the road on which it is located all its in and outbound business. That relieves the carrier to a very great extent from the expense of soliciting the business of that particular industry. In case it was not located adjacent to a

sidetrack they would have to solicit that business.

Mr. James: If the people of Cincinnati attempted to handle the business by making long hauls to the team tracks, what effect would that have upon the congested streets of Cincinnati—

Mr. Williamson: In most instances the streets are very narrow.

Mr. James: Even today, located as they are, isn't there great congestion in teaming through the streets to reach these freight houses?

Mr. Williamson: Yes.

Mr. James: The team tracks get a tally receipt for property while property loaded on private sidings is under "shipper's load and count"?

Mr. Williamson: Yes.

Mr. James: Allowing for the relief given the carriers at Cincinnati incident to industries making deliveries and shipping from private sidings instead of making deliveries and shipping from team tracks, are you of the opinion that the terminal facilities of carriers within the Cincinnati switching district are adequate for the present

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volume of business?

Mr. Williamson: In my opinion they are not. They have been making very material improvements, but there is still need for a great deal of improvement.

Mr. James: I want to give one or two little illustra-

tions.

Give an illustration of the switching service to some of the industries at Norwood on the Baltimore & Ohio Southwestern, not requiring any spotting of cars. If you have an exhibit to illustrate that, I wish you would produce it.

Mr. Williamson: I have an exhibit which is marked

"E. E. Williamson Exhibit No. 4."

(The paper referred was received in evidence and marked "E. E. Williamson Exhibit No. 4," and is forwarded herewith.)

Commissioner Harlan: After this exhibit has been marked, we will take an adjournment until ten o'clock

tomorrow morning.

(Whereupon at 4:40 o'clock P. M. on the 27th day of February, 1914, and adjournment was taken until tomorrow, Saturday, February 28, 1914, at 10:00 o'clock A. M.)

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E. E. WILLIAMSON, the witness on the stand at the time of the adjournment on yesterday, resumed the stand, and

testified further as follows:

Commissioner Harlan: Mr. Williamson, I gathered from your testimony yesterday that Cincinnati is on the plateau that is thirty or forty feet above the river, and runs back to the hills, two or three miles.

Mr. Williamson: Yes, sir; that is the old city.

Commissioner Harlan: The old City?

Mr. Williamson: Yes, sir.

Commissioner Harlan: And those hills are three or four hundred feet high at different points?

Mr. Williamson: Ranging from 175 to about 350

feet.

Commissioner Harlan: And the railroads enter the city through two valleys, small rivers, under conditions that make it rather impossible for large industries to exist there in the old city, or in those valleys.

Mr. Williamson: Yes, sir. There is another valley.

There are about four valleys.

Commissioner Harlan: Four valleys?

Mr. Williamson: Yes, sir.

Commissioner Harlan: The result of those physical condi-

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tions has been such until recently Cincinnati was undeveloped industrially as strongly as it might otherwise have been, and that the industrial section has been pushed out beyond the hills.

Mr. Williamson: Yes, sir.

Commissioner Harlan: And have there been established rather strongly.

Mr. Williamson: Yes, sir.

Commissioner Harlan: Now, you gave us the number

of switch tracks to industries, as I recall it.

Mr. Williamson: Yes, sir. The number of industries or firms that have switch tracks. There may be a larger number of switch tracks than that number that I gave.

Commissioner Harlan: The number of firms having

switch tracks.

Mr. Williamson: The number of firms having switch

tracks, yes, sir.

Commissioner Harlan: You also pointed out that the Cincinnati rate on one applies through a distance of 31 miles.

Mr. Williamson: Yes, sir; the extreme.

Commissioner Harlan: Now, I assume that those industries are about of the class of industries, in variety, that

you would find in any place of the size of Cincinnati? Mr. Williamson: Yes, sir.

Commissioner Harlan: All sorts of industries?

Mr. Williamson: All sorts of industries.

Commissioner Harlan: I assume also that the indus-

trial track situation there is about such as we would find anywhere in a city of that size east of the Mississippi River; in other words, there is nothing there that is peculiar.

Mr. Williamson: Well, there are several situations, owing to the topography and location, that you do not

have in a flat city.

Commissioner Harlan: Yes; but, in a general way, the industrial development there is such as you would find in any city of that size?

Mr. Williamson: Yes, sir.

Commissioner Harlan: And the side tracks to these industries are about such as you would find anywhere?

Mr. Williamson: Yes, sir.

Commissioner Harlan: Now, that gives us all, I think, we need know about conditions at Cincinnati, except we want to know whether, in your judgment, based upon your experience, you regard it as proper, in case this record develops that the railroads are in need of further funds, to make a

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charge for the service of spotting a car at an industry. Now, what have you to say on that point?

Mr. Williamson: Mr. Commissioner, may I-

Commissioner Harlan: In your own way, of course. Mr. Williamson: In my own way; yes. First, let me define what I consider to be spotting. First, delivery, as I understand it, is the taking of a car from the outer yards of any of the lines, say and then bringing that in, and putting it over and upon a private siding. Now, delivery is also, after it is on that private siding. the putting of a car at a particular place on that siding. That is also delivery. The movement of the engine or the cars back and forth on the sidings, to put a car at a particular place or opposite a particular door, I understand that that only is what is known as spotting. That is what I have always understood in my railroad and commercial experience, that that solely was spotting, that the drilling in the yards of the carriers, in the outer yards, the drilling of the car has not been or is not considered spotting; but merely after the car is once on the private siding, then the shifting back and forwardsometimes there is no shifting back and forward—the shoving up of a car at a particular

bin, and uncoupling it, that that final shifting is spotting, and I take it that is generally the accepted definition of spotting.

Now, as to the question of whether there should be any charge, or whether there should properly be a charge The bringing of the car upon the outer yard over the main line through various yards, and then finally putting it onto a private side track—the cost for doing that or the expense for doing that is incident to the delivery on the private siding. Now, the mere shifting of the engine or the cars back and forth on that track, to put a car at a particular point, is a very small part of the service. The expense for the maintenance of track, for the repair of locomotive, the car, and all, is incident to the bringing of the car and placing it on the private track; so all of that expenses is not chargeable, in my opinion, properly, to the mere shifting of the car, to the mere act of placing it at a particular point; so I have reached the conclusion that, based upon my experience and observation at Cincinnati, the outside average expense for the mere spotting. After a car is once on a private siding, would not exceed ten cents for that shifting that I have designated as

spotting—ten cents per car. Some cars, at some plants, may cost a little more than that; but at other plants they may cost less than that, and, in my judgment would not, in the vicinity of Cincinnati, exceed that for the mere

spotting service.

Now, the question is whether that additional charge should be added over and above the charges that are made today, and I view it this way, Mr. Commissioner, that these private sidings add greatly to the facilities of the carriers. They relieve them of a very considerable expense that they would othewise be put to for various items of cost. They can operate their terminals cheaper by reason of these private tracks, and by reason of the industries being outside of the congested district. That is the way I view it from the carrier's standpoint, from the shipper's standpoint and from the standpoint of the community as a whole. I take it that the benefit to the carriers by these industries having these private tracks far outweighs the mere extra expense of making the shifting to spot a car at a particular location on the track; and my answer to your question is this, that my best judgment, based on my experience in the business in Cincinnati, is the mere service of spotting would not exceed ten cents per car, that there 6087

would be no warrant or justification, considering the advantages that the carriers receive by virtue of an industry

keeping up a private track, the carrier being relieved of those taxes and those incidental expenses, and you would not be justified, in imposing an additional charge for that

mere spotting.

I do say this, that after it has been placed at one location, that for any subsequent movement there should be a charge, and as I understand it, the tariffs of the Cincinnati carriers now provide for an extra charge after a car has once been placed at a location on a track, if the engine comes and moves that to another location within the plant.

Mr. James: So that, in making this estimate of ten cents, you only mean that that charge might be applied where there was an actual spotting and not levied on all

cars, irrespective of their being spotted.

Mr. Williamson: No.

Mr. James: Now, then, Mr. Williamson, the train comes in to a breaking up yard; it breaks at that yard; the car is taken out, and the engine carries it to the industry. Is that free service, or is that a service for which a charge is

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made?

Mr. Williamson: That is now, and always has been, considered a part and parcel of the service that should

be performed by the carrier for the rate.

Mr. James: Then, the carrier, on the other hand, drills the cars, arranges them in order, so they may be distributed to the various industries, and where the industry is of a size sufficient so that they may be put in a certain order, is that free service, or is that a part of the transportation included in the rate?

Mr. Williamson: It has always been a part of the transportation included in the rate, and I have never understood it to be considered a spotting or special service.

Commissioner Harlan: Now, Mr. Williamson, taking your own definition as to what spotting means, the service involved in spotting, that is, is only the service from the trunk line's right of way, you might say, to the particular point on the siding where the car is desired by the shipper—that is the way you have defined spotting—now, taking it from that point of view—

Mr. Walter: Mr. Commissioner, I did not under-

stand it that way.

Commissioner Harlan: Very well; I have understood it that

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Mr. Williamson: Yes.

Commissioner Harlan: You have estimated that there is a cost of ten cents to the carrier for doing that service. Now, you still think, do you, that in case this record develops that the carriers are in need of further revenue from the broad standpoint that would entitle the Commission to see that they get further revenue, that this is not a proper way to get it, by making a charge for the extra cost, or perhaps the extra cost and the profit attached to it, for the spotting, as you have defined it?

Mr. Williamson: Yes, sir.

Commissioner Harlan: Is that your view?

Mr. Williamson: Yes; but I think you misunderstood just the spotting.

Commissioner Harlan: Very well.

Mr. Williamson: Not merely from the trunk line, but it is the delivery which constitutes the putting of the cars—one car, two cars, three cars, four cars, or fifteen cars,—over and upon the private siding of the industry.

Commissioner Harlan: At the place where it is

wanted?

Mr. Williamson: No. The first is you get it onto

private track. Now, after it is once on the private track, then the additional shifting that is necessary to put the car at a particular spot, once it is on the private siding—

Commissioner Harlan: That is spotting.

Mr. Williamson: That is spotting, the final service. Commissioner Harlan: I do understood you.

Mr. Williamson: I thought you misunderstood me a

little.

Commissioner Harlan: I do not think I did.

Mr. Williamson: Very well; all right.

Commissioner Harlan: Let me state my question again.

Mr. Williamson: Yes, sir.

Commissioner Harlan: Spotting, as you define it—now, I may have misapprehended it, but if so, I am not aware of it—as you have defined spotting, it is the handling of the car to a particular point on a side track, after it is put on the side track.

Mr. Williamson: Yes, now, let me illustrate.

Commissioner Harlan: Very well.

Mr. Williamson: I can clear that up, Mr. Commissioner, say there is a side track that is thousand feet long or

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five hundred feet long, say, that five hundred feet from the right of way of the carrier. Now, at the end of that, or near the end of that side track, five hundred feet long, there is a warehouse. As I understand delivery, it would be the taking of the cars, and putting of the cars over on that side track and up to that warehouse. Now, that is the delivery and up to that point, I do not consider, and never have considered, that there has been any service such as is now designated as spotting; but if the owner of that warehouse would say to the carrier, "you put Car No. 1 at a particular door of that warehouse, or you put Car No. 2 at another place, and opposite another door of that warehouse," then that final shifting for the placing of the cars opposite those two locations, and that alone, would be spotting.

Mr. James: Spotting is that, then, which is all over

and in excess of delivery.

Mr. Williamson: Yes, sir; and spotting also has been delivery heretofore. Now, I will answer the Commissioner's question—

Commissioner Harlan: No; let us do not have it an-

swered again.

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Mr. Williamson: All right.

Commissioner Harlan: We must go further along with this question of spotting.

Mr. Williamson: All right.

Commissioner Harlan: Take your spur track five hundred feet long, at the end of which is the warehouse.

Mr. Williamson: Yes, sir.

Commissioner Harlan: Now, if a shipper wants a car put at a particular door of that warehouse, you would then say the car is spotted; is that right?

Mr. Williamson: Finally, when it is put at that door,

it is.

Commissioner Harlan: Very well. If it is put at the door, it is then spotted.

Mr. Williamson: Yes, sir.

Commissioner Harlan: If the carrier puts it anywhere on that track, puts it at the wrong door, for instance, or just simply mislays it in front of that warehouse, then it has not been spotted?

Mr. Williamson: No, sir; it is merely delivery on

the track, convenient to unloading.

Commissioner Harlan: So that it may go clear to the end of the spur track?

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Mr. Williamson: Yes, sir.

Commissioner Harlan: And it has not been spotted?

Mr. Williamson: No, sir.

Commissioner Harlan: But to put it at this particular point, it is then spotted?

Mr. Williamson: When that is done, then is spotted.

That is my understanding.

Commissioner Harlan: Then, take that definition. You say that you have estimated that it costs the carrier ten cents to spot a car.

Mr. Williamson: Yes, sir.

Commissioner Harlan: Now, I will put the question again. In your judgment, is it an improper source of revenue, in case the carriers need additional revenue, to

make a charge for what you define as spotting?

Mr. Williamson: I will say this, your Honor, that if for other classes of service, a similar charge was tacked on, measured by the expense to the carriers, so that there would be no discrimination, I do not know that you could consider it an improper source; but, in my judgment, it would not be a wise and politic thing for that policy to be inaugurated.

Commissioner Harlan: To be what?

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Mr. Williamson: To be inaugurated. I say that the benefits now accruing to the carriers from these tracks are over and outweigh the proposition as to whether they should or should not have that.

Commissioner Harlan: But according to your defini-

tion, we have the tracks there.

Mr. Williamson: Yes, sir.

Commissioner Harlan: And, according to your definition, the carrier must put the car somewhere on that track.

Mr. Williamson: Yes, sir.

Commissioner Harlan: Now, to put it at a particular point, according to your definition of spotting, costs the carrier something more. Do you mean to take the position that that service, in the face of a proved deficit, if that is the statement of record, and is disclosed, should be done free of charge by the carrier?

Mr. Williamson: I will say no to that, but with this qualification, your Honor. In the list of eight cars that I gave the detailed movement of yesterday, from the Sharonville yard of the Big Four through various yards, to the delivery at their yard on the team tracks, down here in the vicinity of Second and Plum streets (indicating on map)—in my opinion all of the cars that I mentioned, and

of the delivery, some includes what I term spotting, and some not-that the delivery upon those team tracks-in my judgment, I may be wrong, but in my judgment-taking the investment of the property and all, that that is probably the most expensive, or one of the most expensive deliveries that the Big Four must make in Cincinnati; if there is to be a charge for the spotting of a car on a private siding, based upon the expense, and you go through a terminal of this kind, and you pick out where it is more expensive for the mere spotting-or take this other point of view, Mr. Commissioner: The Big Four will now take, and it is proper, I think, and I think it is fundamental, that a community must have the same rate—that is fundamental I take it a car of lumber from that Sharonville yard would come to these yards and be delivered over here at Brant, Kentucky, on the C. & O. Railroad, at the Cincinnati rate say, of 13 cents from Michigan points. Now, the Big Four, out of that rate of 13 cents, will absorb 30 cents a ton, making delivery here at Brant, Kentucky. Now, the question comes up whether or not it seems to me, in answer to your question, the absorbing of 30 cents a ton to that point, and then the mere charge of 10 cents a car for spotting on a track into some place

over here adjacent to their line (indicating on map)—
Commissioner Harlan: Well, Mr. Willamson, you are now going into the question of propriety of group rates, and I do not think it is profitable to discuss that in connection with this question.

Mr. Williamson: Well-

Commissioner Harlan: And I have no doubt that you do not think it is profitable. If the Cincinnati rate, with these absorptions, will spot a car at Covington, then you might as well commence to argue that a less rate should be charged a point north of Cincinnati, where there is not the absorption; that that goes to all group questions—

Mr. Williamson: That goes to all group questions. Commissioner Harlan: And that can be discussed later, if you think there is any value in that phase of the matter. Well, I do not understand, taking what you have just said, that there is any spotting, as you define it on the team track, except in particular instances, perhaps, where there are unloading appliances required.

Mr. James: It has been testified that they drill produce cars and vegetables cars on some tracks.

Commissioner Harlan: Well, that was produce.

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Mr. Williamson: I think your Honor, in many instances, the expense for delivery on the team track is greater to the carrier.

Commissioner Harlan: Well, there is no spotting

there, as you defined it.

Mr. Williamson: No; not in that sense.

Commissioner Harlan: Now, I put to you the question again, whether you meant to be understood as saying that a charge for the service of spotting, as you define it, is an improper source of revenue, in case additional revenue is needed. Taking your train of yesterday—

Mr. Williamson: Yes, sir.

Commissioner Harlan: You had in that train a carload of brick. If I am not mistaken, you have protested in this case against the increase in the rates on—

Mr. Williamson: Paving brick; yes, sir.

Commissioner Harlan: Now, let us consider this traffic for a moment. Do you wish to be understood as preferring an increase in the rate on brick to a charge for the spotting of a carload of brick? I am putting the question that way, not because the charge for the spotting service would necessarily include an increase in the rate, if that would

seem to be a proper course to pursue; I am putting it to you in the alternative in order to get your precise point of view. Suppose the spotting service, if properly and reasonably charged for, would give to the carriers sufficient revenue in connection with other sources of revenue under discussion in this case, and have been discussed in other places; suppose that should be the alternative; are we to understand that you would prefer an increase in the rate on brick rather than a reasonable charge for the service of spotting a carload of brick in Cincinnati?

Mr. Williamson: I will say, yes, and then qualify it in this way, your Honor. But if there is to be an increase in the rate on paving brick, it should not be a horizontal

increase of five per cent.

Commissioner Harlan: Well, we need not discuss the amount.

Mr. Williamson: I just merely wanted to say that.

Commissioner Harlan: I want the principle in your mind.

Mr. Williamson: I understand:

Commissioner Harlan: We need not limit it to paving brick.

Mr. Williamson: I understand.

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Mr. James: We are here representing paving brick

and our contention that paving brick-

Commissioner Harlan: Well, we do not care about the contention of paving brick. We are dealing here with the general proposition of the means of increasing the revenues of the carriers if it is developed in this record that additional revenues are necessary.

Mr. James: Yes.

Commissioner Harlan: Now, here is a witness who has had a broad experience, and I want the benefit of his view, and the Commission wants the benefit of his view, as to whether, if we adopt the alternative—I do not mean to say that that will be developed to be the alternative, but go get the view, if it shall appear that sufficient revenues can be raised to meet the requirements of the carriers by insisting on the charge for the service, among other the service of spotting, which you admit in your testimony costs the carriers something. Now, would you prefer an increase on the rates on brick rather than a reasonable charge for the service of spotting a carload of brick at Cincinnati?

Mr. Williamson: My judgment would be on that, that if the record shows that the carriers are in need

of addi-

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tional revenues, the most equitable way, considering it from every point of view, would be on the rates, rather than on the point, up to what I have defined spotting; on a broad liberal proposition, from the railroads' standpoint, or from my own view of what the railroads' standpoint would be, and from the shippers' standpoint, and the public standpoint, that would be my answer to that question.

Mr. James: Mr. Williamson, I do not understand that you concede that if the carriers have a deficit, that that deficit is caused by the free service of spotting?

Mr. Williamson: Not at all.

Mr. James: Have you made some examination as to the cause of the deficit arising from the passenger service, and can you illustrate it very briefly in reference to theCommissioner Harlan: Oh, no. That is aside from the particular matter before us today, and we can not go into that today. We have assigned this particular question for today's hearing. Before the record is closed, that is one of the questions that may—

Mr. James: Will we have an opportunity to present that before the arguments in this case of the 16th. We are prepared to show, if your Honor please, on the Penn-

sylvania

lines alone, east of Pittsburgh, that the earnings have dropped down from a net of ten million dollars to less than one million dollars a year in their passenger service.

Commissioner Harlan: We will not go into that question today, Mr. James. Have you any further questions

to put to Mr. Williamson?

Mr. James: In connection with that, may I file a little exhibit in this case showing the deficit from the official files?

Commissioner Harlan: I see no objection to that.

Mr. James: To make it clear, Mr. Williamson, I have understood you to say—and I want to be very clear about it— that the service from the railroad right of way into the industry is not a free service, but a compensated service, under the conditions of the present rates?

Mr. Williamson: That is my understanding. Mr. James: I wanted to be clear about that.

Mr. Williamson: Yes, sir; and I have always viewed it from that standpoint, while a traffic officer of the carriers.

Mr. James: Now, then, in coming to this question of expressing your opinion that that service, which is strictly and properly called spotting, is distinguished from that

service for which the carriers are compensated, in receiving freight, transporting freight, and delivery of the freight, can you give a little more analysis as to why you base the ten cents, and why other elements of the cost to the carrier ought not to be included in the charge for spotting, when spotting is performed, as you have given in your opinion; for example, the cost of maintenance of way, depreciation, fuel, and the cost of conducting the service? Then, too, if you can, illustrate it by reports made by the carriers to the Commission.

Mr. Williamson: Yes. I have in my mind the copies of pages 13 and 93 from the annual report ending June

30, 1913, of the Indianapolis Union Railway Company to the Commission. Page 13 shows that that line has a main track of 9.67 miles, and yard track and sidings of 47.8 miles, with a total trackage of 62.23 miles; and the average expense per car handled for that year, 1913, was 25,926 cents—about 26 cents was the expense, the total expense.

Mr. James: That is the full expense, is it not, of all kinds of cost, operating, depreciation and repairs and all of those items included in the report, from the breaking-up yard right into the industry, including the so-called

free service?

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Mr. Williamson: Yes, sir.

Mr. Brandeis: Mr. James will you ask the witness whether that is both loaded cars and empty cars?

Mr. James: Is that loaded and empty, Mr. Wil-

liamson?

Mr. Williamson: That is loaded and empty; yes, sir. Mr. Patterson: How many cars does it refer to?

Mr. Williamson: It represents 2,194,744 cars.

Mr. Patterson: And this Indianapolis Union Railway is a terminal belt line—

Mr. Williamson: Yes, sir.

Mr. Patterson (continuing): That does switching

and nothing else?

Mr. Williamson: That is true, and that is why we have the cost of switching. That is where we can get the location.

Mr. James: That, therefore, is a good illustration, where that expense is allocated from every other expense from operating the railroad?

Mr. Williamson: Yes, sir.

Mr. Brandeis: I would like to have that explained a little. When you say that includes the loaded and empties, if a car is put in empty and is then loaded, would there be the cost, as you have figured it, of 26 cents or 52 cents?

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Mr. Williamson: I will give you that in a minute.

Mr. Fisher: You mean both operations?

Mr. Brandeis: Yes; two operations, one putting in the empty, and the other taking it out loaded.

Mr. Williamson: That is per movement.

Mr. Brandeis: That would be 52 cents on the operation?

Mr. James: That depends, Mr. Brandeis.

Mr. Brandeis: Well, I want the witness' opinion?

Mr. Williamson: That would be 52 cents, yes, sir-

that operation.

Mr. James: But Mr. Williamson, is it true that every time it is outbound merchandise, they put in an empty?

Mr. Brandeis: We know that is not true.

Mr. Williamson: No, sir.

Mr. Brandeis: You need not ask him that. We know it is not so.

Commissioner Harlan: We know, Mr. James, that it

often happens that there is not a round trip.

Mr. James: As I understand you, it would be proper to ascertain the cost of the loaded movement to the carriers, and multiply that by two, and if not, why not?

Mr. Williamson: Because, in many instances, when a loaded car goes into the industry, that car, when unloaded, becomes available for reloading outbound.

Mr. James: Have we an increase in expense in a case before this Commission, the fabrication of iron and steel? Commissioner Harlan: Everyone understands that.

Mr. Fisher: Mr. Williamson, tell us whether the statistics of this particular road which is referred to contain a compilation that would show how many of the cars are of the kind you have last described, and how many are in operation where an empty car is taken from the yards and put in.

Mr. Williamson: It does not show that.

Mr. James: Mr. Williamson, have you any other illustration now? Is there a record there of the Minnesota

Transfer, Mr. Williamson?

Mr. Williamson: J have another one here, just a minute. Now, the Detroit Terminal Railway, for the year ended June 30, 1913, showed a total trackage of 39.4 miles. The average expense per car handled was \$1.21, and the total number of cars handled was 113,573.

Mr. James: Now, that includes the total movement

from

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the breaking-up yard into the industry and into the team tracks, does it not?

Mr. Williamson: All on that line—whatever that includes.

Mr. James: And if they had been heretofore including free service, that was included in that amount?

Mr. Williamson: Yes; and I would say this from the report, that it includes the maintenance of the track, the maintenance of the locomotive, the superintendence, the expense of any agents—all of these expenses growing

up; that is all included in this expense reported to the Commission.

Mr. James: All of the items required by the uniform accounting to the Commission.

Mr. Williamson: Under their form for the switching roads.

Mr. Fyffe: Does that take into account the value of

the terminal property in any way?

Mr. Williamson: No; this is the expense. But in answer to your question, I want to make this clear. The value of that property, of the terminal company, is there, and is incidental to the delivery, as I have defined it over and upon the side track. Now, to merely make the spotting

additional to that, the property is not employed merely for that spotting service. All the expense incident to the ownership of the property is included in the service for delivery over and upon the tracks, as distinguished from spotting.

Mr. Brandeis: It includes the interest and deprecia-

tion on locomotives, I suppose, does it?

Mr. Williamson: As I understand the report, yes. Mr. Brandeis: Your figures include interest on de-

preciation on locomotive.

Mr. Williamson: Not the interest on locomotive, but the depreciation that is required by the Commission on the report of the switching road, whatever that report requires.

Mr. Brandeis: No capital charge.

Mr. Fisher: No capital charge of any kind?

Mr. Williamson: No, capital charge of any kind, because the capital charge would go to the question of—that capital is there when the car was, if it was merely placed over upon the side track and not spotted. Now, for the mere spotting, you are not to charge the capital account over again.

Mr. Brandeis: You would not say that about the

locomotive service?

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Mr. Williamson: No; for the minute or two employed in performing the service, you would have the interest for one or two minutes or whatever the time was used that was employed in that?

Mr. Walter: It would be very hard to find that, Mr.

Williamson.

Mr. Williamson: It would be very hard to find that. Mr. James: Almost a negligble quantity.

Mr. Williamson: Yes.

Mr. James: Have you the Minnesota transfer and

some of the other Minnesota switching lines?

Mr. Patterson: Did Mr. Williamson explain where the ten cents came from? You were up to the 52 cents?

Mr. James: Yes, sir; that is a few minutes of spotting, as distinguished from the taking of the train from the breaking-up yard and drilling it onto the rails of the carrier and carrying them onto their premises. That is ten cents.

Mr. Patterson: I understand that, but I do not un-

derstand the mathematical process.

Mr. James: He gave you the same line of mathematical process that he got from the carriers.

Mr. Brandeis: Do these figures of this terminal company

6108 include the expense of the drilling on lines of the carriers—this 52 cents or \$1.07—do they include the operation of the drilling on the lines of the carriers?

Mr. Williamson: I could not answer as to that. Mr. James: Mr. Williamson, this is a service performed by a switching engine and a switching crew?

Mr. Williamson: Yes, sir.

Mr. James: Whatever it is, between the breaking-up yard, and the final putting of the car in position so that the car can be unloaded.

Mr. Williamson: Yes, sir.

Mr. James: Would that not necessarily include any drilling if any took place on the line of the carrier after it left the breaking-up yard?

Mr. Williamson: Well, no, it did not include the ex-

pense of the particular terminal line.

Mr. James: Yes; I say on the particular terminal line.

Mr. Williamson: Yes.

Mr. Walter: It includes every movement of every car of whatever kind moved by the Indianapolis Union Railway?

Mr. Williamson: Yes, sir.

Mr. James: That is, if the Indianapolis Union Railway did

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the drilling, it includes the drilling?

Mr. Williamson: Yes, sir.

Mr. Brandeis: And if it did not, it would not.

Mr. Williamson: Yes, sir.

Mr. James: Have you any other illustrations?

Mr. Williamson: I have one report for the Minnesota Transfer Railway, St. Paul, to the Commission, for the year ending June 30, 1912.

Mr. James: That is the switching terminal report,

is it not?

Mr. Williamson: Yes, sir; the switching terminal company's special report.

Mr. James: What page is that?

Mr. Williamson: Page 93. That shows a total expense per car of handling for 691,682 cars, of 98.9 cents.

Mr. James: How many cars are included there? It

will probably be asked of you.

Mr. Williamson: I gave that. Mr. James: Oh, did you? How many cars did you

say?

Mr. Williamson: 691,682. Now, the Minneapolis Western Railway, for the year ending June 30, 1912, shows 42,-550 switched, and the average expense per car for handling was 85.4 cents; the Minneapolis Eastern Railway Company for the

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year ending June 30, 1912, page 93, shows 49,749 cars and. an average expense of 61.1 cents.

Mr. James: Have you any other illustrations there,

Mr. Williamson?

Mr. Williamson: Yes, sir; the Akron & Barberton Belt Railway Company, for the year ending June 30, 1913-I would state that I did not have time to get the 1913 figures for those roads, but I have those in the office, and gave those particular figures for 1912—

Mr. James: We have those figures in reference to

another case.

Mr. Williamson: Yes; and I would be very glad to

submit the figures for 1913—

The Akron & Barberton Belt Railroad Company, 85,-009 cars, with a cost of \$1.125 average expense.

6111 The Toledo Belt Railway. The average expense, as I gathered from an investigation made some time ago, was \$1.19 per car. That included the handling of cars for any distance on the road; also taxes, depreciation and all other expenses, including salaries of general officers, superintendents, and everything else.

Mr. Fisher: You have not told us in these matters about the differentiation of the character of service. What differentiation is there in the illustrations you have

given as to the character of service performed?

Mr. Williamson: These are all switching roads,

where it is allocated, and they report the average expense

per car to the Commission.

Mr. Fisher: Take the Minneapolis matter. Do they not rehandle the freight? Does not that include the rehandling of freight?

Mr. James: This is spotting cars only. Mr. Fisher: I wanted to be sure of that.

Mr. James: These are illustrations of the general propositions which you have stated with reference to the first report you have dwelt on.

Mr. Williamson: Yes, sir.

Mr. Walter: Mr. Fisher's question indicates that these

roads may handle l. cl. l. freight.

Mr. Fisher: As I understand the situation in Minneapolis-and I am familiar with it only from what I have been told-they are applying, or seeking to apply this principle or idea suggested yesterday, namely, of collecting freight inside, taking it outside, and rehandling it outside. I merely wish to ascertain whether or not he has investigated that and knows whether or not this charge includes any expense of that kind, or what it does include?

Mr. Williamson: I would judge so; these reports ought to include all of the expenses.

Mr. Fisher: I have assumed that these records of the switching roads are their total expenses.

Mr. Williamson: Yes.

Mr. Fisher: Whatever they do is included. I understand there is quite a difference in what the various roads do. Some do one thing and others another thing.

Mr. Walter: It would still further reduce the cost

of handling the car.

Mr. Williamson: The particular spotting.

Mr. Fisher: My purpose was merely to get before the Commission whatever the facts are. In other words, the significance

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of this evidence depends entirely upon what service the

roads concerned actually perform.

Mr. Patterson: Do you regard the cost of a terminal switching road, handling, as in one case you have given, over 2,000,000 cars a year, and in another case 689,000 cars a year-do you regard the figures as given there as of value in determining the cost of service performed in the country districts by local freights, two movements

a day, cutting a car off with a road engine and switching a car into a siding?

Mr. Williamson: That would be a totally different

condition.

Mr. Walter: Yet the wealthy road is asking for the same advance that the poor, poverty-stricken road is ask-

ing for. Is not that so?

Mr. Williamson: I understand they are all asking for it. Here is the Buffalo Creek Railroad, at Buffalo, New York. For the year ending June 30, 1913, they handled 211,087 cars and show an average expense of \$1.11 per car.

Mr. James: What you stated with reference to those

other reports would be applicable to this?

Mr. Williamson: Yes.

Mr. Patterson: You did not misunderstand my question, did

you? That the extent of the service performed in the country districts, as compared to the large cities, depends on the wealth of the carrier?

Mr. Williamson: No, sir.

Mr. Walter: What would you say as to charging the amount at the country point that it would cost, and apply only the cost to the man in the city, where it would be so much smaller? Do you think that would be equitable and satisfactory to the public?

Mr. Williamson: Just what the cost in the country is

I have not gone into.

Mr. Walter: Assuming it to be a great deal greater,

say five times as much.

Mr. Williamson: I would like to have that question repeated.

(The reporter read the pending question as follows):

"Mr. Walter: What would you say as to charging the amount at the country point that it would cost, and apply only the cost to the man in the city, where it would be much smaller? Do you thing that would be equitable and satisfactory to the public?"

Mr. Patterson: Mr. Walter means Cincinnati is a

City

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within that definition of a city.

Mr. James: Did you include Sleepy Hollow and Philadelphia as small towns or large towns?

Commissioner Harlan: Let us get along. You can

argue those questions.

Mr. Williamson: It would not, in my opinion, be equitable to add it on to one community and relieve another community from it. It goes back to the question—if there is not sufficient revenue for the carriers, and it must be made up in my opinion leveling it on all traffic—

Mr. Walter: Make the team track man bear his share

as well as the industry man.

Mr. Williamson: Everybody. I would like to make this point clear to the Commission. I was, for some three or four years, in Cincinnati, negotiating with one of the important carriers there the matters of adjustment of switching charges, extending switching districts, and terminal propositions in general. After three years negotiation we came to a tentative agreement. There was represented on my board—on the Board of the Receivers & Shippers' Association—a representative from the Chamber of Commerce representing the various industries;

a representative from the Business Men's Club, the Manufacturers' Club, the Carriage Makers' Club, and a representative of the Produce & Commission man who do a large amount of draying. All in all the community was represented in those negotiations. I was finally given authority to arrange the final details so far as the shipping community was concerned in those negotiations. In all of those negotiations, there was sitting on my board of directors a representative of the Fruit & Produce trade, which did a great deal of teaming, and never once did the question arise as to whether there was any discrimination because they had to haul by dray as against someone else having a car put upon a private track.

I would say in all my railroad experience, and in my experience representing the shippers, and since then, I have never heard that question raised as to where—I have never heard a man that was draying raise that question by saying that he felt he was discriminated against because someone located on a private siding had cars delivered at his door.

Mr. Walter: As the representative of the Chamber of Commerce would not you have been the man with

whom that com-

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plaint would probably first have been lodged?

Mr. Williamson: At that time I was not the direct representative of the Chamber of Commerce.

Mr. Walter: But later?

Mr. Williamson: The Chamber of Commerce was represented in our Association by a director, and those matters would come to me through that channel.

Mr. James: The Receivers' & Shippers' Association

to which you have referred?

Mr. Williamson: Yes.

Mr. James: There is one other question before I pass to the ferry car service. Is it not the practice of the carriers in Cincinnati to sort traffic on team tracks, for example, for produce as distinguished from general merchandise?

Mr. Williamson: In some yards, yes.

Mr. James: Passing, now, to the subject of ferry cars or trap cars. Tell us what you know about such service in Cincinnati, and illustrate it by exhibits if you have any, doing it very briefly.

Mr. Williamson: I do not catch the question.

Mr. James: Tell us what you know about the trap car or

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ferry car service in Cincinnati, and illustrate it with any exhibits that you may have.

Mr. Williamson: The trap car or ferry car service of a community is used in connection with its daily pack-

age car service, loaded out by the railroads.

When the industries at Cincinnati began to move out from the old district of Cincinnati into the suburbs they of course had carload shipments as well as less than carload shipments. The Cincinnati rates were applied from the outlying suburbs as well as from Cincinnati proper.

Mr. James: Did they make substations in the sub-

urbs?

Mr. Williamson: The carriers did not maintain substations at all of these suburban points, but a very few

of them. It was not convenient.

When the industries located on private sidings in the suburbs instead of the carriers providing depots and facilities for taking care of the less than carload business at their stations, in lieu of providing those facilities, the carriers put in what was known as the trap car or ferry car service, so that the Cincinnati less than carload rate would be maintained from that point as per their tariffs. The trap car service, so far as Cincinnati is concerned, was inaugurated to any extent, about the time that these

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industries began to go out to the suburbs. A number of the carriers adopted that as the most economical

method of providing facilities for taking care of less than carload business.

Mr. Brandeis: Will you fix the date of that?

Mr. Williamson: I never went into that. My recollection is that it began in considerable volume about 1906 or 1907.

Mr. Brandeis: 1906 or 1907.

Mr. Williamson: That is my best recollection at this

time. It may have been a little earlier than that.

Mr. Walter: We have a witness here that will show that it existed away back in 1895 to an important degree in Cincinnati.

Mr. James: It was more economical for the carriers to provide the trap car service than to provide the substations?

Mr. Williamson: Entirely so, yes.

Mr. James: The trap car, in a sense, became a substation?

Mr. Williamson: Yes.

Mr. James: A substation on wheels, instead of being

on the ground?

Mr. Williamson: Yes. In that connection, I found at Cincinnati a great deal of confusion as to which of the depots to haul freight to. I

prepared, at the time I was there, a guide to indicate what roads were loading daily merchandise cars, and at what depots they were loading cars for particular points, so as to give to the shippers in that community the necessary information to guide them as to what depots to haul freight, if they wanted to get the benefit of the daily package cars from Cincinnati. There were in excess of 600 daily cars going out of Cincinnati, some going as far as the Pacific Coast and others as far east as Boston.

Mr. Patterson: Are those cars regardless-of-quan-

tity-cars?

Mr. Williamson: Not all. Some of them are. Mr. Patterson: How many are, do you know?

Mr. Williamson: I could not tell that.

Mr. Patterson: Do you know the minimum on those regardless-of-quantity cars, or is there a minimum?

Mr. Williamson: It varied with the various roads.

Some specified a minimum and some did not.

The cars included in the list I made were usually cars that had been in the service for a good many years.

The package car service, as distinguished from the trap and ferry car service, started about twenty years ago in Cincinnati. These cars had stood the test of time. Some few of

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them were not paying. Those that were not paying were called to my attention, and I called it to the attention of the carriers, and recommend that they cut out those cars where the tonnage did not warrant the use of them. There were some few cut out upon my recommendation.

Mr. James: Will you identify that as an exhibit, so

that we can have it marked?

Mr. Williamson: I will identify this as Williamson Exhibit No. 5.

(The paper referred to was received in evidence and marked "E. E. Williamson Exhibit No. 5," and is forwarded herewith.)

That plan was brought down to date by my successor at Cincinnati, and I will introduce this pamphlet as my

Exhibit No. 6.

(The paper referred to was received in evidence and marked "E. E. Williamson Exhibit No. 6," and is for-

warded herewith.)

Mr. Walter: These package cars may have freight intermediate to Cincinnati as to destination—in other words, a car going to St. Louis might be stopped at Indianapolis and some freight put in there to go on.

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Mr. Williamson: Not in those cars. Those were special through cars. I will briefly illustrate the point.

The B. & O. Southwestern load at their depot at Second and Smith Streets in Cincinnati a daily car for St. Louis proper, that is at this location here (indicating on map).

At their Brighton station, out there, they load a daily car for the Rock Island depot at St. Louis. That is all freight from this vicinity that is going to points on the Rock Island beyond St. Louis is loaded into that car.

We will take as an illustration the Globe-Wernicke

Company a user of trap car service at Norwood.

Their idea is that these industries with less than carload freight get the benefit of these 600 odd daily package cars from the down-town depots at Cincinnati. If the Globe-Wernicke Company have enough freight to make up a ferry car, which freight is going to points beyond St. Louis, reached by the Rock Island Railroad, they put that freight into a ferry car at their plant, and that, then, will be taken by the Baltimore & Ohio Southwestern to their Brighton Station, there put into that car that is loaded there each day for the Rock Island depot in St. Louis.

The Globe-Wernicke Company's plant is adjacent, with a short distance, to the depot of the Baltimore & Ohio Southwestern at Norwood. They have no adequate facilities there for taking care of this less than carload business. The Globe-Wernicke Company can dray that business over to the depot of the Baltimore & Ohio Southwestern in Norwood; the Baltimore & Ohio Southwestern would take and load it into a car, and, to get it into the Rock Island daily package car that is being loaded at the Brighton depot, the B. & O. Southwestern would haul that same car down to the Brighton stations and perform exactly the same service.

So, whichever way they handle it, the B & O. Southwestern would have to provide a car, because the Cincinnati rates apply from Norwood to St. Louis. loading of that ferry car, at their plant, in my judgment, would be a more economical arrangement for the carrier than to have the freight drayed to this depot and then switched in. I think on the whole it would be a more

economical arrangement.

As I have said, as the industries went out and located in the suburbs, the railroads, in lieu of providing depot facilities for handling this business at Cincinnati rates, practically made the ferry car or trap car a substation in those

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localities.

Mr. James: I want to close your evidence by showing you something that you have not yet seen. It is a letter from M. B. Farrin Lumber Company to Mr. G. M. Freer, Commissioner of the Cincinnati Chamber of Commerce, Cincinnati, Ohio. It is dated Feb. 25, 1914.

I call your attention to short paragraphs, which I will ask you to read into the record as illustrating the fact that these trap cars in fact become substations, and that

it was at the request of the carriers themselves.

Mr. Williamson: "Relative to the charge for trap car service, we beg to state that we are located exclusively on the C., H. & D. Railroad Company, and, for many years, both individually and in connection with other shippers in our vicinity, we endeavored to have the railroad company furnish a transfer or loading station in the vicinity of Winton Place, where we might deliver our less than carload business to them. In fact we circulated a petition which was signed by all of the shippers in this locality, and we presented it to the railroad com-pany, asking for these facilities. The railroad company

simply ignored us and told us in lieu of a freight house we might use the trap cars for our less

than carload business, from which we understand the handling of trap cars is more economical to the railroad companies than the providing of transfer or freight house facilities in our particular locality, namely the Winton Place Station."

Mr. James: Is there anything else which you wish to say that you have not covered. If so, please state it briefly in order that I may turn you over to the tender mercies of Mr. Patterson and these other gentlemen.

Mr. Williamson: I want to emphasize this fact: That the tendency, not only in Cincinnati, but from my observation in other communities, is rather to the enlargement of the number of sidetracks rather than to decrease them; that is decentralization from the congested districts. My experience is that every time an industry is taken away from the congested districts, to that extent there is relief and benefit to the carriers.

Mr. Brandeis: We have heard to a certain extent from Chicago, and have heard from Detroit and Cincinnati. It seems to me to be proper for those who are representing large cities in the east, such as New York, Philadelphia and Boston, to now be given an opportunity to

present briefly the situation there.

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Before doing that, it may be of assistance to them, and to others here, if I should state in a few words the results of the investigations undertaken by the Commission, through its representatives, on February 20th, as to the actual cost as observed in the operation described as "spotting," which differs, of course, from the spotting that has been described by Mr. Williamson.

Mr. Walter: That is a matter that we desire to object to and we wish to insist upon the objection, because it involves questions which, upon their face, are of the greatest importance. I do hope that Mr. Brandeis will put the witnesses on the stand who made the investiga-

tion.

Mr. Brandeis: The observation was made at eight terminal points—

Mr. James: Are we not entitled to a ruling on that,

your Honor.

Commissioner Harlan: The objection is noted.

Mr. Brandeis: Also at four way-stations points. The results of the observations, together with the full detail, it is my purpose to have placed at the disposal of any

of the parties interested in the case, so that they may have an opportunity to examine it carefully.

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Mr. Walter: May we put on a witness as to that

particular matter?

Mr. Brandeis: I have no doubt that if the matter becomes of such importance, as to detail, that you will have, at the proper time the fullest opportunity not only to put on witnesses, to cross-examine witnesses, but to put in any evidence to the contrary that you may see fit.

At the present time the desire is—and if it is not of service to you, it may be to some of the other gentlemen present—here—to know what the Commission's representatives have observed. As the time is limited in which hearings can be had at the moment it is necessary to put this in a little briefly, instead of putting on twelve witnesses and having them examined as to all of the details.

Mr. Walter: Are they the same men who went to the

Rverson Place?

Mr. Brandeis: I do not know whether any of them are the same men, but they are all men who have the confidence of the Commission.

Mr. Walter: We have no question about the confi-

dence, but this is not a case for confidence.

Commissioner Harlan: Proceed, Mr. Brandeis.

Mr. Brandeis: The first investigations were made in New York City, I might say that in giving the data as to expense the figures are not in all cases comparative. In some instances the figures include operation, maintenance, and depreciation; some of them are limited. But whether it is one or the other appears in each instance by reference to the figures themselves as well as the working papers, which show exactly what items are included in the figures. The papers also show in detail the circumstances under which the spotting took place, the distance, the number of cars spotted, and also the character of the service. The first is on the New York Central.

Mr. Fisher: Is there any indication of the definition of "spotting" employed, or is there any difference?

Mr. Brandeis: There is not any difference in the definition, but it in no respect corresponds to Mr. Williamson's definition. For instance, it takes in distance figures which are furnished in the various cases, so that you can see what the distances are, and the circumstances-

Mr. Fisher: I asked that question because you said it

did not agree with Mr. Williamson's definition. I thought perhaps we should have stated what the definition is, and also

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have stated whether the different observers followed the same definition.

Mr. Brandeis: All that appears, as to what is meant

by the operation of spotting.

The first is the New York Central, at New York City. The number of cars spotted was 25, the average cost of spotting per car was 65 cents, the minimum cost of 31 cents and the maximum cost \$1.03.

At Buffalo the number of cars observed was 29. The average cost was 88 cents, the minimum cost was 62 cents

and the maximum cost \$1.84.

At Baltimore the number of cars observed was 33. The average cost was \$1.57, the minimum cost 86 cents and the maximum cost \$3.29.

At Philadelphia the number of cars observed was 23. The average cost was \$3.67, the minimum cost \$2.11 and the maximum cost \$7.06.

At Pittsburgh the number of cars observed was 40.

The average cost was 85 cents-

Mr. Walter: Does the name of the railroad appear on any of those statements?

Mr. Brandeis: It appears in each case.

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Mr. Walter: Have you copies of that statement that

can be furnished us?

Mr. Brandeis: I do not know that there are copies here, but they are available. The railroad at New York and Buffalo is the New York Central; at Baltimore the Baltimore & Ohio and at Philadelphia and Pittsburgh the Pennsylvania.

At Detroit on the Michigan Central, the number of cars observed was 38. The average cost of spotting was 48 cents, the minimum cost 21 cents and the maximum

cost \$1.46.

At Cincinnati, the Big Four the number of cars spotted was 17. The average cost was \$1.04, the mini-

mum cost 56 cents, and the maximum cost \$2.55.

At Chicago on the Lake Shore the number of cars observed was 16. The average cost of spotting was 44 cents, the minimum cost 30 cents, and the maximum cost 76 cents.

As to the way-stations. On the New York Central, from North White Plains to Mt. Vernon the number of

cars spotted was 6. The average cost was \$1.26, the minimum cost 95 cents and the maximum cost \$2.08.

On the Pennsylvania Railroad, between Philadephia and Devon, the number of cars observed was 14. The average cost was 67 cents, the minimum cost was 45 cents and the

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maximum cost \$1.42.

On the Baltimore & Ohio, between Brunswick, Maryland, and Washington, the number of cars spotted was three. The average cost was \$1.88; the minimum cost was 46 cents and the maximum cost \$4.03.

On the Lake Shore & Michigan Southern, between Chicago and Elkhart, the number of cars spotted was 74. The average cost of spotting was apparently 19 cents. The minimum was 15 cents and the maximum 38 cents.

Mr. Brownell: Will these schedules be placed in the record?

Mr. Brandeis: They will be made available.

Mr. Walter: Does that show the team track service; switching and team tracks?

Mr. Brandeis: No.

Mr. Walter: Were those reports made out by accountants or by the Safety Appliance men? The reason I ask that question is that one set of men has practical operating experience and the other may not have.

Mr. Brandeis: I am told they were made out by ex-

aminers, some of the had operating experience.

Mr. Walter: But not by the Safety Appliance force?
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Mr. Brandeis: I do not understand that any of them were of the safety appliance force.

Mr. Walter: Was that the same service that would

be performed on the team track?

Mr. Brandeis: That I am unable to answer. There

is no testimony on that point here.

Mr. Fisher: With such differences in the figures, it would be helpful if we could know what instructions were given to these men as to what they were to regard as spotting, whether they received instructions or whether they were left to exercise their own judgment.

Mr. Brandeis: We will place the letter of instructions, together with all these reports, in the record, so

that you may have the full facts.

Mr. Fisher: Do you know whether it included any instructions on that subject or whether they were left to work it out for themselves?

Mr. Brandeis: I think they had adequate instructions. You will see from an examination of the letter of instructions. The letter of instructions and these reports will be placed in the record so that everybody may examine them.

I stated at the outset that the difference in the data in

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regard to these different reports was so material that I should be obliged to take a very long time to undertake to place them in detail before you. This was rather with an idea of showing you the very wide variation both in the cities and in the country. It is to a lesser extent in the country districts because we have not as large a number of reports. We only have about half.

Mr. Walter: Can that be embodied in the record so

that your transcript will show it?

Mr. Brandeis: Precisely.

Commissioner Harlan: It is understood that copies of the letters of instructions and these other matters will be made available to the parties interested.

Mr. Brownell: May they not be put in the record so that we will receive them with the stenographer's min-

utes?

Commissioner Harlan: Yes, that may be done.

Mr. Brandeis: Mr. Lincoln, who represents New York, would like an opportunity to make a statement.

Mr. James: I want to make a request; that the examiners who made the reports be called to the stand today in order that we may have an opportunity to cross-examine them upon this information furnished to the Commission.

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Mr. Walter: We second that request.

Mr. Fisher: In view of Mr. Brandeis' suggestion I am a little concerned about the question of procedure. Mr. Brandeis has stated that we have heard from Chicago. All that we have heard, of course, has been the matters to which Mr. Barlow has referred. There were various matters which the Commission itself desired to have the Chicago representative look up and present. We have here the representative of Montgomery Ward & Company, who has made some very careful analyses and investigations, to such an extent as he has been able to do so in the time available. We have also the representative of the Tunnel Company.

Commissioner Harlan: We wish to get along as rapidly as we can. If we get the general views of the other communities this morning as we proceed in the afternoon we will be able to take up the specific matters.

Mr. Fisher: I had in mind the passage of time. I do not care to press the matter. I merely want to get some information as to what the Commission will do.

Mr. Henderson: The switching charge at Columbus, Ohio, is published in I. C. C. Number 1, issued by Ira

W. Morris, Agent, and is \$2.00 a car.

At Cleveland, Ohio, the charge is \$2.50 a car, published in Pennsylvania Railroad, I. C. C. Number F-296.

Columbus, Ohio, and Cleveland, Ohio, are both considerably larger than Nashville, and it is reasonable to suppose that the terminal limits there are equally as, if not more, extensive than they are here.

Now the Southern Railway, in its I. C. C. A-5575, publishes switching rates and rules for the Southern

Railway at, I think, all the junctions on the Southern Railway, and with some few exceptions the charge is \$2.00 a car. It generally applies on competitive as well

as non-competitive business.

Taking such points as Atlanta, Georgia, Birmingham, Alabama, and Chattanooga, Tennessee, under the exceptions to the general rules at Chattanooga shown on page 14 of the tariff, the Southern Railway switch freight from Chattanooga to McCarty, Tennessee, at \$3.00 a car. This involves a main line haul of 6 miles and one terminal movement at Chattanooga and another at McCarty. This charge of \$2.00 per car is made at other points, such as Jacksonville, Florida, which I previously mentioned, Mobile, Alabama, Richmond, Virginia, and Savannah, Georgia. All of those cities compare favorably in size with Nashville; some of them are larger than Nashville.

Mr. Gwathmey: What did you say the charge is at

Richmond, Virginia?

Mr. Henderson: It varise, but it averages \$2.00 a car. I have the tariff right here. Richmond is \$1.50 to \$2.00, \$2.50, \$3.00, \$3.50, and in one instance \$4.00.

There are varying charges according to the distances

As a matter of fact the Interstate Commerce Commission in I. C. C. Docket Number 3789, the case of George M. Speigle vs. Southern Railway Company, 25 I. C. C. 71-77, found that the charge made for switching by the Southern Railway is in some instances as low as \$1.50 per car and in some instances as high as \$3.00 per car, and that the average charge is \$2.00 per car, and stated that \$2.00 is perhaps the average charge in the country, as a whole.

Now the Chicago, Milwaukee & St. Paul Railway in its I. C. C. B-2269, charges at Minneapolis, Minnesota, for switching carload freight between industries located on its line and its point of interchange with its connections, \$1.50 per car where a one-line switching movement is performed and \$3.00 per car where a two-line switching movement is necessary to reach the desired connection.

At Louisville, Kentucky, the average switching charge is \$2.00 per car, as published in Louisville & Nashville

Railroad Tariff, I. C. C. Number A-12658.

The rules of the Louisville & Nashville Railroad at Louisville are somewhat similar to those at Nashville in that the Louisville & Nashville will not switch

270 competitive freight except in connection with the Louisville, Henderson & St. Louis Railroad, with the further exception that they will switch benzole, benzine, liquid petroleum gas, naptha, oil gas, petroleum ether, petroleum naptha and petroleum spirits, regardless of the point of origin or destination. The charges of the Louisville & Nashville Railroad at Louisville, Kentucky, vary, being in some instances \$1.00 per car, in others \$2.00 and in still others \$3.00 per car. In one case the charge is \$4.00 per car, but this is a two-line switching movement and includes the charge of \$1.00 per car made account of the use of the hub track, I believe they call it.

Louisville, as a city, is considerably larger than Nashville and the terminals at Louisville must necessarily be equally as extensive, if not more so than the terminals at Nashville, and it is reasonable to assume that the switching service at Louisville is greater than that per-

formed at Nashville.

I think, Mr. Commissioner, that these charges at other points that I have cited and shown in my exhibits show that the \$3.00 charge is unreasonable and that the

charges made for switching competitive business 271 are unreasonable in and of themselves and rela-

tively, and we see no reason why the rules here should not be practically the same as at other points reached by the Louisville & Nashville and Nashville, Chattanooga & St. Louis Railway, and I think that \$2.00 a car is a reasonable charge to apply on competitive as well as non-competitive business.

That is all I have.

CROSS-EXAMINATION.

Mr. Jouett: In your Exhibit Number 12 you show the switching charges prevailing in some 16 or 17 places. It is a fact, is it not, that you searched the tariffs to find

the \$2.00 places?

Mr. Henderson: Well, no: I found very few other places other charges. I searched the tariff to find the places served by these same roads, and as near as possible points of the same or nearly the same size as Nashville.

Mr. Jouett: What is the population of Nashville? Mr. Henderson: Nashville is about 112,000, I believe, the last census. I do not know exactly what it is now. Mr. Jouett: Is it not a fact the census shows Belle-

ville, Illinois, is 21,000?

Mr. Henderson: There are some points in there smaller than Nashville, as I explained.

Mr. Jouett: Chattanooga-

Mr. Henderson (interrupting): I mentioned Chattanooga as being smaller; also Decatur.

Mr. Jouett: Decatur is smaller?

Mr. Henderson: Yes, sir.

Mr. Jouett: And Evansville, Indiana, is not half as big, is it?

Mr. Henderson: No; I do not suppose it is. Mr. Jouett: How about Harriman, Tennessee?

Mr. Henderson: Harriman is the only point on the Tennessee Railroad where they switch for any one at all.

Mr. Jouett: What is the size of Harriman?

Mr. Henderson: I don't know.

Mr. Jonett: About?

Mr. Henderson: I really don't know; I have been to Harriman; it is a small place: I don't recall.

Mr. Jouett: Well, about the size, the population?

Mr. Henderson: It would not be any use of my guessing about it; it is a matter of record what the population is; I do not claim Harriman is anything like the size of Nashville.

273 Mr. Jouett: Why did you put it in this list then?

Mr. Henderson: Well, in the first place, as I just explained, that is the only point on the Tennessee Central Railroad where they had an unrestricted switching arrangement. That was one of the reasons.

Mr. Jouett: What did the unrestricted switching arrangement have to do with it? Switching is switching.

Mr. Henderson: Well, at Clarksville, the rules there are the same as they are here; the Louisville & Nashville and Tennessee Central will not switch freight at Clarksville for each other. At Lebanon the Nashville, Chattanooga & St. Louis and Tennessee Central will not switch

for each other. Now Harriman was the only point on that line where they connected with anybody who will switch for them.

Mr. Jouett: Take the next place, Henderson, Ken-

tucky. That is 11,000, according to the census.

Mr. Henderson: 11,000.

Mr. Jouett: Nashville is 10 or 12 times as big, or more.

Mr. Henderson: Now, to save time—

Mr. Jouett (interrupting): I do not want to save time, Mr. Henderson.

Mr. Henderson: I tried to explain as I went along that Atlanta, Georgia, Birmingham, Alabama,

Memphis, Tennessee, and New Orleans, Louisiana, were all cities as large or larger than Nashville. Now I think with those exceptions the other points are all of less size than Nashville.

Mr. Jouett: Did you not just state in answer to my question a moment ago that you had selected places, not in order to get \$2.00 places, but places that were about

the size of Nashville.

Mr. Henderson: I said I selected places served by the same railroads that serve Nashville and, as far as possible, to get points that were about the same size. Now I have gotten points that I have mentioned which are larger than Nashville.

Mr. Jouett: Well, Knoxville, Tennessee, is about

36,000, is it not?

Mr. Henderson: I do not know what the population of Knoxville is. I know it is smaller than Nashville.

Mr. Jouett: Lexington.

Mr. Henderson: I have been to Knoxville several times and been around the terminals there of the Southern Railway, and I do not know just how the distances on the terminals compare, but I know they take in a large stretch around the city.

275 Mr. Jouett: Still speaking of round numbers,

Lexington is about 35,000, is it not?

Mr. Henderson: I have no definite information. I have given you the points on there that are as large or larger than Nashville, and I state all the balance of them are smaller than Nashville. Now if you want me to pick each one of them out I will do that.

Mr. Jouett: I want to get some idea how much smaller. Mobile, Alabama, is about a third as large as

Nashville, 51,000, according to the census?

Mr. Henderson: 51,000—that would be a good deal more than one-third, if that is right. I do not know

whether it is or not. The last census gave Nashville 112,000.

Mr. Jouett: Well, a little more than twice. Montgomery is shown by the census to be 38,136, or do you

know that?

Mr. Henderson: That is about right. But, as I explained this morning, the terminal movement in Montgomery is, I believe, fully as such as it averages here. It may not be altogether, but it will compare very favorably with them.

Mr. Jouett: Then the city of Owensboro, according

to the census, is 16,011, that is correct, is it not?

Mr. Henderson: I will take your word for it.

Mr. Jouett: Now Paducah is shown by the census to have 22,000. Now I will ask if you think it is a fair comparison to present three-fourths of these, or four-fifths of these towns of that small size as throwing

any proper light on Nashville?

Mr. Henderson: I think when you start at the head of the Louisville & Nashville Railroad at Louisville to Cincinnati—and, by the way, the switching charges at Cincinnati will average about \$3.00; they vary, but that is the average— now when you start at Cincinnati and go the entire length of the Louisville & Nashville Railroad to New Orleans and to Memphis and get 6 or 8 towns larger than Nashville, and the others, although they may be smaller, it is a pretty good indication to my mind that the Nashville rate is too high.

Mr. Jouett: What towns in that territory make up

the six or eight you say are larger?

Mr. Henderson: There is Atlanta, Georgia, is one.

Mr. Jouett: That is one.

Mr. Henderson: Birmingham is two.

Mr. Jouett: Well, two.

Mr. Henderson: Memphis is three, New Orleans four-well, four then all larger than Nashville.

Mr. Jouett: Do you not know that it is recognized generally that the switching charge is in many instances far less than the cost of service; that it grew up in many instances as a mutual thing among the railroads and was not intended to represent the cost of the service at all?

Mr. Henderson: I do not know whether that is true or not; it may be; but if it grew up everywhere less we do not see why it should not have grown along here at the same time.

Mr. Jouett: Do you not recognize different condi-

tions!

Mr. Henderson: Let me finish my answer, please.

Mr. Jouett: All right.

Mr. Henderson: Your switching charge at Atlanta, at Birmingham, at Memphis, at New Orleans, might have originated when your terminals were not nearly as extensive as they are now, but the terminals there have grown just the same as they have here. The switching charge has grown only at Nashville, and remained the same everywhere else.

Mr. Jouett: The switching charge here was \$2.00 before there was any joint arrangement between the Louisville & Nashville and the Nashville, Chattanooga & St.

Louis, was it not?

Mr. Henderson: That is my understanding, yes.

Mr. Jouett: And have you taken into consideration the fact that everything that goes into the actual cost of this service has increased, that is,

all supplies and labor?

Mr. Henderson: I have. That is the very point I made just now. Those things have increased at Atlanta, Birmingham, Memphis, New Orleans, and the only place the switching charge has increased has been at Nashville.

Mr. Jouett: When were the switching charges in-

creased here?

Mr. Henderson: Well, they were increased when the joint terminal arrangement was put into effect. As soon as there was another railroad came in here—of course, before the Tennessee Central came in there was no switching charge at all; there were only the two roads who operated a joint terminal.

Mr. Jouett: You do not know anything about the former switching charges at these other places, whether they have increased, diminished or remained stationary,

do you?

Mr. Henderson: In a general way I know they have never been less than \$2.00. I have not the tariff references, but I think I am safe in saying they have never been less than \$2.00.

I have been in the railroad business and in this business for about 14 years and my recollection is that \$2.00 was the general switching charge. Usually, when I first started railroading, that was about the

average.

Mr. Jouett: You did not look at the switching charges in the other places in the country except here, did you?

Mr. Henderson: Why, yes, I gave you the places

that I had the specific references to the tariffs. I gave you those. Some others that I did not show on this exhibit. I gave you reference to the Southern Railway Tariff which carries, as the Commission found in that case I cited—that that was their average switching charge all over their line and that it was perhaps the average charge throughout the country as a whole, \$2.00.

Mr. Jouett: What case was that, Mr. Henderson? Mr. Henderson: That was the case of George M. Speigle vs. Southern Railway, Docket 3789, 25th Volume of the Interstate Commerce Reports, pages 71 to 77.

Mr. Gwathmey: That case did not immediately in-

volve the question of switching charges.

Mr. Henderson: It was a transit privilege case and that question did come up in it as to the extra cost to the railroads by reason of allowing the reshipment—the

extra terminal expense, and it did strictly involve

280 switching in that way.

Mr. Jouett: Do you not know that in very many places throughout the country, and in many places that have been considered by the Commission, the switching charge is \$5.00 a car, and in many places more than that?

Mr. Henderson: Yes, sir; we have some here at

Nashville that pay \$6.00 a car.

Mr. Jouett: Do you know any tariff for that?

Mr. Henderson: Well, I have shown the tariff refer-

ence there on my exhibit.

Mr. Jouett: That brings me to a consideration of the exhibits that you have offered, Mr. Henderson, to show that fact. I call your attention now to Complainants' Exhibit Number 2, which was the first exhibit filed by you, which is headed "Statement of switching charges at Nashville, Tennessee." You show the non-competitive switching charge to be \$3.00 per car; then you have a list under the head of "Competitive freight" at which you have made extensions ranging from \$36.00 down to \$12.00 per car. At the bottom of that statement you have this statement as your authority: "L. & N. R. R. G. F. O. 1930, I. C. C. Number A-12658." Do you mean

to say that there is any tariff in existence, issued by the Louisville & Nashville Railroad, that shows any such switching charges as you have put in

that exhibit as if they were switching charges?

Mr. Henderson: Just what do you mean?

Mr. Jouett: Just what I asked.

Mr. Henderson: Well, if they had not been in the tariff I would not have put them in there and would not have shown that tariff reference for them.

Mr. Jouett: Have you the tariff there from which

you found these?

Mr. Henderson: No, sir; I have not. I explained to you this morning that those rates, competitive switching rates, were taken from the Louisville & Nashville Railroad Nashville local tariff, as shown on the statement. Those are the rates as shown between Nashville, Tennessee, and Overton, Tennessee, and are applied as switching rates under the note in the tariff which authorizes the application to all points not shown the rate to the more distant stations. Now they are not set out there on the switching rate. The First Class is \$36.00, as shown in the complaint, and the complaint shows where they were taken from and where they were used, or

claimed to be used, as competitive switching

282 rates-

Mr. Jouett (interrupting): I am referring-

Mr. Henderson (interrupting): Let me get through.

Mr. Jouett: Go ahead.

Mr. Henderson: And also quotes that note from the tariff on page 13 of the complaint. Those rates are set out as switching rates on competitive traffic as published in that tariff I have cited on my exhibit.

Now on page 14 the note is quoted which authorizes

the application of those rates as switching rates.

Now they are not put in there and specified as switching rates, and it is not claimed anywhere in the complaint or in my testimony that they are so published. It is a fact that they are applied and always have been applied ever since I have been in Nashville, and in your paragraph 10 of your answer you admit that they are.

Mr. Jouett: Where is that station that you call

Overton?

Mr. Henderson: Why, I do not remember exactly where it is; a few miles out of Nashville here. If I had a map of your road I could show it to you.

Mr. Jouett: On what railroad?

Mr. Henderson: On the Louisville & Nashville. 283 Mr. Jouett: Is it south or north of the city?

Mr. Henderson: Why, I believe it is south, towards Franklin, as I recall it; I am not certain about that,

though.

Mr. Jouett: By what authority, then, do you say these are switching charges and put them under the heading in your exhibit "Switching charges at Nashville," if you say now they are the local rates from Nashville to Overton?

Mr. Henderson: Because they are the local rates

which are applied as switching rates on competitive traffic.

Mr. Jouett: Do you know of any competitive traffic that the Louisville & Nashville has applied that rate on and, if so, state when and where, so we may get what you

are driving at.

Mr. Henderson: There were several witnesses here today who testified to actual experiences and gave the car numbers and the dates and the amounts charged. I remember some lumber shipments, iron shipments and bridge material shipments, and I know personally that they are the rates. I was connected with the general freight office here of the Southern Railway and Tennessee Central for four years. I know what the Louisville & Nashville charged on business that came in here from

competitive points. They never made any bones about it that I ever heard of before. It is generally known to every one who had anything to do with

it that that was the charge.

Mr. Jouett: That the Louisville & Nashville Rail-

road switched on these local tariff rates-

Mr. Henderson (interrupting): I see what you are driving at now. Do you mean that the Nashville Terminals did it and the Louisville & Nashville did not do it?

Mr. Jouett: Do you not know the Louisville & Nashville did not have and have never had any terminal tariff at Nashville showing any charge for a switching service or any other service with reference to competitive busi-

ness, local tariff or switching tariff?

Mr. Henderson: I know those were the rates assessed on competitive traffic that reached Nashville by the Tennessee Central Railroad going to industries on the Louisville & Nashville or the Louisville & Nashville Terminal Company or the Nashville Terminal, or whatever you want to call it. I do not know who performed that switching. It might have been done by the Nashville, Chattanooga & St. Louis, but it was done and those rates were charged. If they are not the rates then you charged

it without any authority—I don't know.

285 Mr. Jouett: That is just what I am trying to find out whether there has ever been any authority shown in the tariff under which the Louisville & Nashville could switch a car that came in over the Tennessee Central from the point of interchange to an industry on the joint tracks.

Mr. Henderson: I do not know just how you operate your joint terminals. The Nashville, Chattanooga & St. Louis might have done it, or the Terminals might have

done it; the Louisville & Nashville Railroad might not have done it with one of their own engines or own crews, but the switching was done and those charges were applied.

Mr. Jouett: Now as to the Nashville, Chattanooga & St. Louis, they have applied, and under the tariff have applied the local rate that has been in existence for years from Nashville to Shops Junction, have they not?

Mr. Henderson: The Nashville, Chattanooga & St. Louis had specific switching rates in the terminal tariff applicable to competitive traffic. They were published in the terminal tariff and published as switching rates under Rule 8 quoted on page 17 of the complaint.

Mr. Jouett: Do you know the history of that rule? Mr. Henderson: I don't know where it originated,

no, sir.

Mr. Jouett: Do you or not know that the Nash-286 ville, Chattanooga & St. Louis had a local rate from Nashville to Shops Junction before the city of Nashville extended its limits so as to bring Shops Junction within the city?

Mr. Henderson: I don't know whether that is true or not; I never saw the tariff. I will take your word for

it if you say it is.

Commissioner Meyer: Please state where, on Exhibit Number 1, Shops Junction is.

Mr. Henderson: The same as Baxter Heights, Mr. Commissioner.

Commissioner Meyer: Shops Junction is the same

as Baxter Heights?

Mr. Henderson: The Nashville, Chattanooga & St. Louis call it Shops Junction and the Tennessee Central call it Baxter Heights.

Commissioner Meyer: Then I think I know where

it is.

Mr. Jouett: You do not know then that the Nashville, Chattanooga & St. Louis maintained regular local rates from Nashville to Shops Junction or Baxter Heights before the city limits were extended?

Mr. Henderson: No; I do not know whether they did

or not.

Mr. Jouett: Has not that been your general understanding or information?

Mr. Henderson: I have heard that said, ves.

287 Mr. Jouett: Now is not there a depot or station out there at Shops Junction?

Mr. Henderson: Why, there is a track connection there with the Tennessee Central; I do not think though

they have a freight depot there; I am pretty sure they do not deliver any less than carload freight there.

Mr. Jouett: Well, there is a station there and a pas-

senger depot, is there not?

Mr. Henderson: I don't know whether there is or not.

Mr. Jouett: There is a passenger shed, I understand?

Mr. Henderson: That may be; I don't know.

Mr. Jouett: Now have you not also heard and is it not generally understood among railroad men that having established that station at Shops Junction and having maintained it for years, that when the limits of the city of Nashville were extended so that Shops Junction fell within the limits, that it still maintained the station and maintained the tariff-maintained that station in its tariff?

Mr. Henderson: Well, I don't know that I have ever

heard that explained.

Mr. Jouett: Well, then, have you heard this further explanation, that when that occurred and by the exten-

sion of the limits that station came within the 288 limits, in order to prevent confusion incident to

having it appear as a local station, which would seem to be out of town, it was put into the terminal tariff, which would show the conditions within the town-have you not heard that explanation?

Mr. Henderson: No; I never have heard that; I have no doubt that is correct. Of course, if the city limits were extended to take in a station which prior to that time had been outside of the city limits, it would be the natural thing to do, and I suppose that is why it was done.

Mr. Jouett: Now then, have you not understood that it was the position of the Nashville, Chattanooga & St. Louis all the time that in the handling of competitive freight brought to that junction by the Tennessee Central, that they treated it just as a local station and applied the local rate? Is not that what they have actually done and done it constantly all the time?

Mr. Henderson: No: I have never heard that claim

before.

Mr. Jouett: What has been the claim of the Nashville, Chattanooga & St. Louis for charging the local rate then? Have they ever undertaken to assert that that was a switching charge?

Mr. Henderson: Why, they published it in their

289 switching tariff as a switching charge.

Mr. Jouett: Do you mean in the terminal tariff?

Mr. Henderson: In the terminal tariff; that is where it is carried, and that is what they called it.

Mr. Jouett: What is that?

Mr. Henderson: They called it a switching charge.

Mr. Jouett: Who calls it a switching charge?

Mr. Henderson: The Nashville, Chattanooga & St. Louis did publish it in their terminal tariff.

Mr. Jouett: Let me see whether they call it a switch-

ing charge anywhere.

Mr. Henderson: Well, Rule 8, quoted on page 17, it says: "This tariff"—speaking of that terminal tariff— "will not apply on traffic between industries, side tracks, or warehouses located on the Nashville Terminals, and the Tennessee Central Railroad. On traffic received from or delivered to the Tennessee Central Railroad at Shops Junction, except as provided under 'exception' below, the following rates will be applied."

Now in that same tariff and under that exception they publish a charge of \$3.00 per car on non-competitive

business, and in the same rule they publish these 290 other rates, beginning at 12 cents per 100 pounds and going down as low as 3 cents on lumber as switching charges on competitive business. I do not see what else you could call it.

Mr. Jouett: Do you now know they are the local rates for the distance, and are they not spoken of as

rates and not switching charges?

Mr. Henderson: Yes, sir; they are spoken of as

rates, switching rates; that is what they are.

Mr. Jouett: That is what you think they are. You do not mean the Nashville, Chattanooga & St. Louis has ever stated that in its tariffs or by any of its officers?

Mr. Henderson: The Nashville, Chattanooga & St. Louis put the rates in its switching tariff as applying on competitive business. Now I do not see why they should put it in the switching tariff if it was not switching rates.

Mr. Jouett: You call it a switching tariff?

Mr. Henderson: Yes, sir.

Mr. Jouett: Is that the terminal tariff?

Mr. Henderson: Yes, sir.

Mr. Jouett: Why do you not call it the terminal tariff?

Mr. Henderson: I have always called a terminal tariff a switching tariff.

Mr. Jouett: Are there not very many other things

291 incident to a terminal tariff?

Mr. Henderson: I will try to think of .t and call

it a terminal tariff. I have called it a switching tariff

all my life and will continue to do so.

Mr. Jouett: Then your Exhibit Number 2 and your Exhibit Number 3 and your Exhibit Number 4, in which you have set out in detail different extensions ranging from \$36.00 down to \$5.00 in some instances, perhaps, on live stock, are simply summaries of calculations that you have made upon imaginary cars or imaginary weights based upon the local switching tariff of the Nashville, Chattanooga & St. Louis Railroad?

Mr. Henderson: Those charges-

Mr. Jouett (interrupting): I got that wrong. Local switching tariff is wrong; strike that out. Upon the terminal tariff of the Nashville, Chattanooga & St. Louis Railway and upon the local tariff of the Louisville & Nashville Railroad.

Mr. Henderson: Those exhibits are exactly what they purport to be, and as I explained in detail when I filed them. Now I do not care whether you call the Nashville, Chattanooga & St. Louis tariff a terminal tariff or a

switching tariff. It is immaterial to me. The rates are in there and I show the references to those tariffs. The rates are not set out in any of those tariffs at so much per car. I have taken the 100 pound rates on First Class and shown what it would amount to on a car weighing 30,000 pounds. I have taken the class rates set out on Class B, corn, and shown what it would amount to on a car of 60,000 pounds. I have done that on all the articles shown. I have shown exactly what I have done, how I got them, where I got them, and there is nothing there except what the statement shows on the face of it.

Mr. Jouett: Mr. Commissioner, we will close the cross-examination here except there is a bare possibility I might want to ask Mr. Henderson one or two questions in the morning. There are one or two things I want to ask my associates about.

Commissioner Meyer: In view of the fact Mr. Henderson expects to be here in the morning it will doubtless be agreeable to him. That is all you desire to ask

the witness at this time?
Mr. Jouett: Yes, sir.

Commissioner Meyer: And you have no other testimony to introduce, Mr. Henderson?

Mr. Henderson: No; I have no further examination of myself. That is all I have, Mr. Commissioner. I might possibly have one other witness in the

morning for probably 10 or 15 minutes. I do not think

though I will. I will try to get Mr. Lyle up here to explain that map, though, if I can get hold of him.

(Witness excused.)

Commissioner Meyer: You may call your first witness.

Mr. Jouett: In order that the Commissioner may get an insight into the case for the defendants as we expect to present it, I wish to make a statement, which will be as brief as possible, but which I think should be suffi-

ciently elaborate to make clear our position.

The city of Nashville is served by three railroads. The Nashville, Chattanooga & St. Louis, the Louisville & Nashville and the Tennessee Central. The Nashville, Chattanooga & St. Louis has three western termini, namely, Paducah, Hickman and Memphis. The lines unite at Hollow Rock and the line runs almost due east to Nashville, passing through Nashville and extending to the southeast. The Louisville & Nashville runs from Louisville almost due south through Nashville to Bir-

mingham and other Southern cities. The Tennes294 see Central is a short road which begins at Harriman Junction, in the State of Tennessee, and runs
almost due west to Nashville, and passing through Nashville runs in a northwesterly direction to its terminus
at Hopkinsville, Kentucky. Its total length is about 251
miles. A map will be presented that will show clearly
the location of the various lines within the city of Nashville, the different roads to be indicated by different
colors.

The switching practices in vogue at Nashville are these: the Nashville, Chattanooga & St. Louis and the Louisville & Nashville by mutual trackage arrangements occupy the same tracks and neither will switch competitive business for the Tennessee Central nor will the Tennessee Central switch competitive business for either of them.

It is understood that when delivery is made at Shops Junction the Nashville, Chattanooga & St. Louis will handle that car as it would a delivery from an individual or an initial line, at its local rates, and that it has been doing, but that, we maintain, is in no sense a switching service.

The Nashville, Chattanooga & St. Louis and the Louisville & Nashville switch non-competitive traffic to or from the tracks of the Tennessee Central at a uniform charge

of \$3.00 per car. The Tennessee Central performs similar switching service to the tracks of either of the first named roads for the same charge.

Neither the Nashville, Chattanooga & St. Louis nor the Louisville & Nashville switches competitive traffic to or from the Tennessee Central, and neither the Louisville & Nashville nor the Nashville, Chattanooga & St. Louis switches competitive traffic to or from the tracks of the other, the tracks composing the terminals used by these two companies being operated as the tracks of each individual company, under an arrangement which will be

fully described in the evidence.

The Tennessee Central, on the other hand, does not switch competitive traffic to or from the tracks of either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis. The definition of non-competitive traffic is set out in the tariff as follows: "By non-competitive is meant traffic for which the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Railroad

does not compete at equal rates with the Tennessee Central Railroad."

There are two distinct and separate claims set forth in the complaint. The first is that the switching practices above mentioned are unreasonable and discriminatory in violation of Section 3 of the Act to Regulate Com-

merce. The second is that the charge of \$3.00 per car made by all the railroads in switching non-competitive freight is of itself unreasonable and dis-

criminatory.

There has been much evidence tonight, of a certain character, introduced as to the reasonableness of this charge, namely, a comparison with a number of places as to whose local conditions we can have and do have no definite information. We expect to show to the Commissioner what this actually costs, not taking into consideration the overhead charges, the interest, the value of the use of the terminals, the cost of maintenance, or the value of equipment; just the actual service, and will show that it is far in excess of \$3.00 per car.

Before taking up the other ground of the complaint, the principal cause of this complaint as to the switching practices at Nashville, I have thought it would be proper for the Commission to be advised as to the exact relations between the Nashville, Chattanooga & St. Louis and the Louisville & Nashville with reference to their terminals at Nashville. It is possible that in this statement there may be minor errors as to dates and as to details of facts, but I think it is practically correct and will be fully

substantiated by the evidence.

Prior to June 15, 1896, the Louisville & Nashville Railroad Company's line from the north entered the city and stopped at a point near the crossing of the Cumberland River. It, at that time, owned a line of railroad which went south from Nashville and whose terminus in Nashville was some distance south of the present Union Station. The link between these two termini was filled by the use of the Nashville, Chattanooga & St. Louis' line under a trackage agreement.

I will add that the original agreement whereby these two lines shared with each other in these terminal facilities was made in 1872, long before the Louisville & Nashville Railroad had acquired any interest in the stock of

the Nashville, Chattanooga & St. Louis.

Mr. Henderson: Mr. Commissioner, I would like to

know if Mr. Jouett is testifying.

Mr. Jouett: I am making a statement of facts that I am going to prove.

Mr. Henderson: You are not testifying yourself? Mr. Jouett: No, sir; I do not know a thing about it.

Mr. Henderson: I just wanted to know.

Mr. Jouett: At that time the depot of the Nashville, Chattanooga & St. Louis was situated near the site 298 of the present Union Station. (The terminal facil-

ities of both lines were very inconvenient and unsatisfactory. To relieve this situation the two roads decided to build a Union Station and construct terminals for the joint use of both. This was advisable not only from the standpoint of economy and efficiency, but because it was greatly desired by the city of Nashville. The plan determined upon was to transfer to a third company the title to the Union depot site and certain trackage on both sides of it for a short distance in the heart of the city, in order that such company could by mortgage upon the Union Station property and its adjuncts raise the money with which to carry out the enterprise. The charter was accordingly obtained for the formation of the Louisville & Nashville Terminal Company. It must be remembered that this was not an actual Terminal Company in the sense in which that term is customarily used. for it was not contemplated that this third company was to do any terminal business, but that, on the contrary, as soon as the company was organized and the enterprise financed the so-called Terminal Company was to, and did, in fact, lease its said property to the two railroads jointly.

The charter shows, as we shall see, that the power 299 immediately to dispose of its property by a lease, which was for 999 years, was expressly given in the charter granted by the Legislature. This feature, however, is unimportant since the property of this com-

pany is insignificant in comparison with the terminal

tracks of the two companies.

Next arose the necessary negotiations with the city of Nashville, providing for the construction of viaducts and other kindred matters incident to the construction of the Union Station and of the tracks leading to it from the north and south.

The evidence shows that the attempt was made by some of the citizens of Nashville to have the ordinance contain a provision to the effect that any other railroad, which might thereafter come into Nashville, should have the right to make connection with, and upon reasonable terms enjoy the benefit of these terminals that were proposed to be constructed. There was considerable public agitation of the question and the ordinance was finally passed which did not give this right to other railroads. It was vetoed by the Mayor and was about to be passed over his veto when the two railroads interested notified the city authorities that they would be unwilling to expend

the large sum of money involved when there was such a sentiment against it as had permitted the All plans were thereupon abandoned and nothing more was done in the matter for a period of something like two years. In the meantime, during this interval the citizens of Nashville became very insistent in their demands that the Union Station be constructed and that the other contemplated improvements be made.

The most vigorous opponents of the original plan became controverted to it and joined in the effort to have the railroads again take up the matter. Mass meetings were held and every pressure brought to bear to bring

about this result.

Finally, in the year 1898, the railroads consented to do it, and accordingly an ordinance was passed which imposed no regulation upon these companies with respect to their permitting any other road to use the terminals. This ordinance was offered in evidence and is Exhibit - of Witness Keeble.

The Railroads immediately raised a large sum of money, over a million dollars, and proceeded with the improvements. Meantime, in pursuance of the plan agreed upon from the beginning the so-called ter-

301 minal company, without ever endeavoring to operate the Union Station and adjacent terminals, by lease of June 15, 1896, and a subsequent modification thereof, dated December 3, 1902, leased to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis all of its terminal property and facilities for the term of

99 years. It will be understood that this terminal property was situated in the heart of Nashville and with no outlet in either direction except over the line of the Nashville, Chattanooga & St. Louis Railway. Thereupon, in order that the two companies, which then held this terminal property as lessee for the term of 99 years, might be in position to jointly enjoy it, a mutually satisfactory trackage and operating agreement was entered into between them by the terms of which all of the tracks of either company within the switching limits of the city of Nashville was leased by each to the other so that each acquired a joint and equal right with the other to the use and enjoyment of all of their tracks within the city of Nashville. This agreement was made August 15, 1900, and the arrangement for convenience was called the Nashville Terminals.

Commissioner Meyer: Now that was an agreement between the Nashville, Chattanooga & St. Louis

302 and the Louisville & Nashville?

Mr. Jouett: Yes, sir.

Commissioner Meyer: What became of this original

Louisville & Nashville Terminal Company?

Mr. Jouett: As I explained, but perhaps not as fully as was necessary. (The Louisville & Nashville Terminal Company was only organized for the moment to take title in order to make the mortgage necessary to raise the money necessary to construct the Union Station and facilities upon it, and as soon as that work was finished it leased for 99 years this property jointly to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Therefore, the title for 99 years passed out from that holding company, passed into the two railroads jointly. Then it was that the two railroads entered into this arrangement for the joint operation and maintenance not only of the little strip of ground embraced in this lease from the Louisville & Nashville Terminal Company, but in which they each transferred to the other trackage rights over all of its lines in the city, as the result of which each road became and is today the joint owner, or

rather entitled to the equal, joint use, of every foot 303 of the tracks of both railroads within the city of

Nashville.)

Commissioner Meyer: In Paragraph 3 of the petition there is a quotation from the charter of incorporation of this Louisville & Nashville Terminal Company, apparently, under date of March 31, 1893. The last phrases of that quotation from the charter of incorporation are these:

"For the accommodation of railroad passengers and

for hauling and transferring railroad freight."

Now you have spoken of that as a holding company. That charter would go very materially beyond that of holding, would it not?

Mr. Jouett: Yes, sir. I tried to explain that the company was in actuality not like the ordinary terminal company, because it never did go into operation.

Commissioner Meyer: But this was its charter?

Mr. Jouett: Yes; that was the charter under which

it would have operated.

Commissioner Meyer: And the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly acquired that charter?

Mr. Jouett: No, sir; that is just what they did not do.

Commissioner Meyer: Where is that charter?

Mr. Jouett: We have that paper and it will all

be introduced in a few moments. 304

Commissioner Meyer: Well, if some witness will explain the relation of that charter to the present company-

Mr. Jouett (interrupting): Yes, sir.

Commissioner Meyer: And just what has become of those charter rights and duties-

Mr. Jouett (interrupting): I can explain that; the

witness will too.

Commissioner Meyer: I do not want to anticipate

anything.

Mr. Jouett: But I am very glad for you to ask me. I simply dictated this very hurriedly last night, this being perhaps a more concise statement than I would make if I made it extemporaneously, and I am glad for you to ask me anything.

Commissioner Meyer: Well, please do not take any more time with it now. When your witnesses come they

may explain it.

Mr. Jouett: I would like to finish just one word of explanation there with reference to that, that there is a distinction between a company acquiring the charter rights of another company and merely acquiring the property. Now they simply disposed of this property

by a 99-year lease; they never began to operate as a terminal company. They disposed of the prop-

erty to these two roads. And answering further the suggestion that is perhaps in your Honor's mind I will say that it is a comparatively immaterial matter even if the charter rights had been acquired and even if they were operating under the charter rights, because it is just a small section of ground whereas the terminals that are involved in this switching proposition embrace many, many miles all through the city of Nashville.

In addition to thus creating a joint ownership in the tracks and other property with the exception of certain freight stations and other facilities, which each retained for its individual use, all of which will be fully shown by the contracts, the two companies by the same instrument agreed upon a basis of joint operation. This agreement provided for the joint employment of a superintendent, station master, master of trains, road master, superintendent of buildings, master mechanic, ticket agent, baggage master and other necessary subordinate officers, agents and servants.

It also provided for procuring the necessary equipment for their joint use in the operation upon joint ac-

count of the terminals.

The expense incident to this operation of the terminals was to be and is apportioned between the two railway companies upon the basis of use. It is the contention of the Nashville, Chattanooga & St. Louis and the Louisville & Nashville, and we do not believe it will be seriously denied, that this contract whereby each road acquired trackage rights over the tracks of the other and the two roads agreed to share in the expense of the maintaining and operating the joint terminals is a contract that is not only valid in every particular, but is a manifestly proper and sensible arrangement and one which has proven and will continue to prove of immeasurable benefit to the city of Nashville.

The plans for the use and operation of the Union Station facilities, as well as all of the tracks of both railways within the city of Nashville, have been carried out since the beginning of said operation and they are in full

force and in actual operation today.

Under this arrangement it is manifest that neither line in any sense—and this is the point I wish to emphasize—that neither line in any sense switches cars for the other since each road has the absolute right to use and occupy all of the joint tracks in the city and every

movement of trains or other feature of operation
307 by each road is done by its own agent. That is, it
is done by and for itself. It will readily be seen
that this arrangement for the joint use of the tracks of
both lines was essential to the enjoyment by each of the
Union Station, as well as for the passing through the
city of passenger and freight trains, so that the fact of
the right of each to use all the tracks in connection with

industrial switching was merely an incident to and by no means the main feature of this arrangement for the joint use and operation of the tracks within the city of Nashville.

In other words, the switching was merely an incident; it was not the purpose of the joint arrangement at all; but the switching is not a switching in any sense of one for the other. Each does its own switching over tracks

which each has the right to use.

We feel confident, therefore, that the claim that these roads switch for each other or otherwise discriminate against the Tennessee Central will not be pressed when the attention of the complainants is called to these historical facts, but if they are, we are sure that such claim would not for a moment be regarded by this Commis-Before leaving this subject, however, it may be

noted that in addition to the other conveyances and benefits arising to the city of Nashville out of this arrangement, there was a distinct and definite

financial saving to all shippers by reason of this fact; before the joint arrangement was entered into the Nashville, Chattanooga & St. Louis and the Louisville & Nashville each collected from the shippers a charge of \$2.00 for switching non-competitive business either inbound or outbound, and that \$2.00 was not absorbed. Under the new arrangements, however, no such charge could be made or has been made, for the reason that, as heretofore explained, every switching movement is the movement of the switching line itself, made for its own interest and by means of its own instrumentalities and agencies.

Leaving this feature of the case, then, I will note very briefly the facts and the law which are important in the trial of the case as presented. Of course, the question of law involved is the construction of the proviso to Section 3 of the Act to Regulate Commerce. It is our contention that under the conditions here presented the right to take jurisdiction of the subject-matter was distinctly withheld from the Commission by the proviso to Section 3 of the Act to Regulate Commerce, just mentioned, which the Commission will remember forbids the Commission

to require a carrier to give the use of its terminals 309 to a competitor. That is a matter which will, of course, be threshed out later when we come to discuss the question of law involved.

As we can not foresee, however, what the Commission's decision will be upon this question of law, we are compelled also at this time to present any further de-

fense we may have upon the facts. As to this it is our position that even though the Commission should hold that it had power to require unrestricted switching, the facts that appear at Nashville do not make this one of the cases where that power should be exercised. On the contrary, we expect to affirmatively show that it would be

unwise, inexpedient and unjust to require it.

In the first place it must be remembered that the shipper is put to no appreciable disadvantage, for unlike the rule in other cases the carriers at Nashville do switch non-competitive business for each other. That is to say, if the carrier upon whose tracks the industry is located can not perform the transportation service it freely switches for the benefit of the other carrier, so as to enable it to perform the transportation service. It only refuses to switch when it can itself perform the trans-

portation service and can perform it at no greater cost to the shipper than is charged by its com-

petitor.

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That is what we have shown here, as clear a case as can be imagined of absolute fair dealing, and the clearest case for the presentation of this principle that we rely upon, that we have a right to protect our terminals. The shipper is not affected in the slightest. If it is non-competitive it is freely switched for the other line; if it is competitive then he can get service over the other line on which he has located his industry. He can suffer no financial loss except in the very rare instances of misrouting which, as was explained by the witnesses today, will be one of the three cases where the consignee fails to give instructions to his consignor to route the delivery on his tracks, where the consignor disobeys those instructions, in which event it is not the railroad's fault; it is the business man's fault; and in the third case is where the railroad misroutes it, and then it always takes care of the charge.

No proof will be offered, no proof can be offered of any financial difference, as I say. But look what it will mean on the other side to the carriers under the con-

ditions at Nashville.

We will show that this disadvantage to the Nash-311 ville, Chattanooga & St. Louis or to the Louisville & Nashville, if it is compelled to do unrestricted switching—these disadvantages will be very considerable.

In the first place, these two roads, because they can be treated as one, each owning a half interest in all of the tracks, have very many more industries, more than twice as many industries on them, the evidence will show.

although I have not the exact figures with me tonight-Mr. Henderson (interrupting): Will that be shown in the evidence?

Mr. Jonett: That will be shown in the evidence, yes, sir. It will be more than twice. We will show every bit of this. I am just trying to lay it out before the Commissioner so he will understand what the evidence will

be, and I will be finished in a moment.

We will show that we have more than twice as many industries as the Tennessee Central and that those industries are very much more important, that they have very much greater cost of property and actually do very much greater business proportionately than industries on the Tennessee Central. We will show they go just behind the wholesale houses on Front Street, I believe it is,

312 where there is practically no car space; perhaps one for each. We will show, therefore, that the conditions are such that the Tennessee Central can not reciprocate, so that if we are required to throw open our terminals to them they have the chance at more than twice as many industries as ours to take away competi-

tive business as we would have from them.

Another important reason why this reciprocal switching should not be required at Nashville is the fact, as the evidence will abundantly show, that the Nashville terminals are already taxed to their utmost capacity so that any material addition to their burden will so increase the congestion as to materially injure these roads in rendering service and will also necessarily affect in a material manner the character of service that the public will receive. This result is due to the fact which the evidence will show, that it requires at least twice as many movements to accomplish a switching service where a car is moved between an industry on the Louisville & Nashville or Nashville, Chattanooga & St. Louis to the point of interchange with the Tennessee Central, than where the same car is moved out directly over the line of the Louisville & Nashville or the Nashville, Chattanooga & St. Louis. Now, these additional movements just tend to that much more clog and congest the terminals. All of these facts will come out clearly 313 in the proof.

There is another feature about this case I think it is not improper to mention. The city of Nashville does not here appear as the ordinary disinterested representative of the public asking for unrestricted switching. I have just shown, and we will show, what a material advantage it would be to have these terminals thrown open where

they could get the unrestricted switching to the twice as

many industries upon our line.

Now the city of Nashville, I am advised, owns a million dollars of stock in the Tennessee Central. I am not blaming the city of Nashville for wanting it open; I am not saving it is improper; but I do say that it is an entirely proper thing for the Commission to consider when it hears this complaint. It is in effect the complaint of the largest stockholder of the Tennessee Central asking that the privileges of this free switching to and from the large number of industries upon the Louisville & Nashville and Nashville, Chattanooga & St. Louis tracks shall be given to it.

Where do you get that information that Mr. Stokes:

the city of Nashville is the largest stockholder?

Mr. Jouett: Well, somebody told me that yesterday, that it was a million dollars and that it was the 314 largest single stockholder.

Mr. Stokes: I am asking you the source of that

information.

Commissioner Meyer: I understand that is to be a

matter of testimony.

Mr. Jouett: We will testify to it. Mr. Keeble may not have been the gentleman, but somebody in the conference yesterday made that statement to me—there were half a dozen of us talking about it. Is there a larger one than a million dollars?

Mr. Stokes: Well, we will wait until the evidence.

Mr. Jouett: All right.

Commissioner Meyer: The books of the city treas-

urer ought to show.

The only point I was making was, Mr. Jouett: whether it is the largest or not, that a million dollar stockholder is naturally very must interested and properly interested in advancing the interests of its company; but I think that it ought to appear in that way in the proper light so that the real relations can be known, when the Commission comes to decide the case.

Mr. Commissioner: It is not perhaps exactly logical, but before going into the switching case proper I 315

desire to introduce Mr. Keeble, to ask him about the relations of these two roads and the development of this condition at Nashville with reference to their united efforts in connection with this Union Station and other terminals. I would like to introduce him first just to explain the whole situation, before we take up the case proper. I ought to say that Mr. Keeble is an attorney for the Louisville & Nashville Railroad and has

expressed some embarrassment about appearing, but he knows the situation fully and I know the Commission will appreciate the situation.

Commissioner Meyer: It is not unknown on the part of the Commission for counsel to testify, not always

formally.

Mr. Jouett: I guess that is true too.

JOHN B. KEEBLE was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Jouett: Mr. Keeble, where do you live?

Mr. Keeble: Well, I live in Nashville.

Mr. Jouett: How long have you lived in Nashville? Mr. Keeble: Well, I have practiced law here for 25 years the first of next month.

Mr. Jouett: Are you connected in any way with the Louisville & Nashville Railroad, one of the defend-

ants?

Mr. Keeble: Yes: I am district attorney at Nashville for the Louisville & Nashville Railroad.

Mr. Jouett: How long have you been engaged with

the Louisville & Nashville Railroad?

Mr. Keeble: Since the first of November, 1901.

Mr. Jouett: Are you familiar with the facts relating to the development of the joint relation between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway here at Nashville?

Mr. Keeble: You mean in regard to the terminal

arrangements?

Mr. Jouett: Yes, sir.

Mr. Keeble: The contracts leading up to that?

Mr. Jouett: Yes.

Mr. Keeble: I think so, sir.

Mr. Jouett: Will you state fully the history of the development that has culminated or did culminate in the making of this joint arrangement whereby they operate and maintain jointly the terminals in the city of Nash-

ville, and by that I mean all of the tracks of both

317lines in the city of Nashville.

Mr. Keeble: I can not go back of my own knowledge farther than 1896, which was prior to the purchase of this property and the construction of these terminals. I have a general knowledge, from the study of the records of the company and from my personal knowledge as a citizen prior to that time, but from that time on

I have been more or less connected in one capacity or another with the development.

In 1896 I held the position of city attorney for the city of Nashville. I held that office from November, 1895, until January, 1898. At that time the present terminal situation had not developed. The Louisville & Nashville Railroad Company had some yards in East St. Louis and some near the College Street station, just west of the river, to my knowledge, and some yards in South Nashville that were connected with the Nashville & Decatur Railroad Companies and the Nashville & Chattanooga Railroad had some yards lying between. That is to say, lying between perhaps Cedar Street on the north and I don't know how far they extended towards the south, but

in many places.

In 1896 the community became interested in the question of having at that time especially a new

they were more or less congested and small and narrow

passenger station, and especially in regard to the Tennessee Centennial Exposition that was to be held here in 1897. The matter was broached in the Chamber of Commerce at that time, as I recall, and also in the City Council. I was considerably connected with that discussion, because being city attorney, and not only that, but my law partner at that time was a member of the council and was the chairman of a committee that was appointed for the purpose of taking up the question of arranging with the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company the making of a contract for the construction of a new passenger station, new freight stations and other terminal facilities in the city.

When that committee was appointed, composed, as I remember, of Mr. —I have a record here—Bruce—no; I don't remember the total membership of that. But Mr. J. H. Bruce of Marsh & Bruce, were members of it, Mr. Barthel and several other members of the committee. After the matter was taken up it grew very much larger than was originally anticipated. At first the railroads

did not seem to be particularly interested in the 319 project, and when they did become interested they wanted to project what they regarded as adequate terminal facilities for many years to come. That would necessitate the closing of a number of small streets and some more or less important streets; it would necessitate the construction of viaducts, one of which runs a little west of this building and crosses the railroad yards. At that time there was a tunnel under that street under

which there were only two or three tracks-I don't remember exactly how many.

Mr. Jouett: May I interrupt you long enough to ask whether or not at that time the Louisville & Nashville had any line running through the city of Nashville?

Mr. Keeble: No; it had no line; it had a contract arrangement with the Nashville, Chattanooga & St. Louis.

Mr. Jouett: I am speaking of its own rails. Mr. Keeble: It had no track of its own.

Mr. Jouett: Do you remember how far back the arrangement had been made between the Nashville, Chattanooga & St. Louis and the Louisville & Nashville Railroad to acquire the right to run over its track through the city of Nashville in order to connect with the line below?

Mr. Keeble: I have here the contract to that ef-320 fect which I am informed is the original contract

on that subject.

This is a contract entered into between the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway on the first day of March, My information is that that is the first contract that ever existed by the terms of which the Louisville & Nashville Railroad Company had any rights to use any tracks connecting its railroad system that came in from the north with the Nashville & Decatur Railroad on the south.

Mr. Girard: Mr. Keeble, will you file a copy of that contract as your exhibit?

Mr. Keeble: Yes; I will file a copy of this contract.

I do not want to put in the original.

Mr. Jouett: Do you know whether at that time the Louisville & Nashville Railroad owned any of the stock in the Nashville, Chattanooga & St. Louis Railway!

Mr. Keeble: I think not; I don't remember the exact date when the Louisville & Nashville Railroad was supposed to have acquired the controlling interest in the Nashville, Chattanooga & St. Louis Railway, but my recollection is it was about 1880 sometime; I am not positive about that date.

Mr. Jouett: Now you may proceed.

321Mr. Keeble: The only definite knowledge I have of that date, Mr. Jouett, was that my recollection is that Governor Porter was elected president of this railroad immediately after the acquisition of that stock, and he went out of office in January, 1881, as governor of the State, and it was after he went out, so it was about that time. Now this ordinance naturally aroused a good

deal of interest, and it would not be of any special moment, and it would take a great deal of time, to relate the various discussions; but there were public meetings held, there was opposition to this ordinance, there was opposition to the ordinance on several different particulars. One source of the opposition was, or one ground of opposition was that the city was going to contribute a hundred thousand dollars to the erection of the approaches to the viaduct, or to pay something towards the damages to the abutting owners; I do not remember the details, but there was a question of a hundred thousand dollars in there.

There was another controversy, as appears from these records here—this minute book here—as to the closing of the numbered streets between this site of the present

terminal yards and the east side of the present terminal yards and the east side, and there was a

strong sentiment developed in the city to the effect that if this contract was to be made that the city should incorporate into the contract a provision requiring the Terminal Company and the Railroad Companies, who are the three parties to this contract, or proposed contract, to agree that other railroads that might enter the city of Nashville should have the right to use these terminal facilities upon an equitable basis.

Now to illustrate just how that sentiment was expressed, I find here in the minutes of the City Council

of that period, from which I read-

Mr. Girard (interrupting): Mr. Keeble, is there a copy in there of the ordinance you refer to? Have you found a copy of the ordinance?

Mr. Keeble: Mr. Girard, I have not found a copy of

that ordinance.

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Mr. Jouett: You mean the first ordinance? Mr. Keeble: I mean the first ordinance.

Mr. Girard: Is there not a printed copy pasted in that book somewhere?

Mr. Keeble: I do not know. We will find a copy.

Mr. Girard: If you can get the former ordinance

323 will you file a copy of that too?

Mr. Keeble: I will. I may be able to find it. I, as city attorney, redrafted the final form of the ordinance that was finally abandoned in 1896. Subsequently, as representative of the Terminal Company, I redrafted the new ordinance with all amendments, under which the terminals were built.

Mr. Girard: You were speaking about the one that

was abandoned. Was that the one that was vetoed by the Mayor?

Mr. Keeble: Yes, sir; they were, with the exception of some details with regard to certain outlines and with regard to the limit of the liability of the city in some particulars, they were identical.

Now I will try to find a copy of the original ordinance, and we can file, if we can get a copy, the other contract.

When this question came up for discussion Mr. Ellis, a member of the City Council, offered this amendment— Mr. Girard (interrupting): Will you cite the page in

the book?

Mr. Keeble: Yes, sir; if you will give me time. On page 426 of this book.

Commissioner Meyer: That book has not yet been

described.

Mr. Keeble: This is the minute book of the city 324 of Nashville for the year 1896.

In May, 1896, the Council went into the committee of the whole, as appears on page 426, and then on page 428

appears Mr. Ellis' resolution or amendment.

Mr. Ellis offered an amendment to be known as Item 15, providing that the Terminal Company hereby agrees that it will permit any new railroad or railroads that may hereafter be constructed into the city of Nashville to enter and use the said terminal station and the tracks of said company, upon paying proper and just compensation therefor. Should the Terminal Company and the new road or roads fail to agree as to compensation they shall appoint a third party to decide, and the decision of the arbitrators shall be final.

Now these minutes show, and I have a very distinct personal recollection of the controversy that arose out of that amendment, it was finally incorporated into the

bill.

You mean into the first ordinance? Mr. Jouett:

Mr. Keeble: I mean the first ordinance that was proposed. At that time it appears from this minute book that there was a very animated discussion and this min-

ute at this place shows that there were present in the City Council a number of prominent men of this 325

city outside of the city government who participated in the discussion for and against that amendment, and they set out their respective contentions. For instance, President A. J. Harris, responded-president meaning in that place president of the Chamber of Commerce- and at that time one of our leading wholesale merchants. He congratulated the Council upon the man-

ner in which the members were considering the bill; it was a great question; it was the universal sentiment of the city that the depot should be built; the Chamber of Commerce had confidence in the wisdom and sagacity of the Council, and knew that the proper safeguards would be incorporated in the bill. The Chamber of Commerce had recently passed a resolution for having the depot at a cost to the city not exceeding a hundred thousand dollars, and the Council should consider the matter in the spirit of give and take.

Now that was the attitude that Mr. Harris appears to

have spoken on page 429.

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On page 430 President Harris of the Chamber of Commerce again addressed the Council. He said that the representative business men of the city were overwhelmingly in favor of the contract with the Louisville &

Nashville Railroad Company; if the amendment was destined to kill the bill it should be left out.

Mr. Henderson: Mr. Commissioner, I object to Mr. Jouett objected to my introducing here certified records of the Commission because he could not crossexamine the witness. Now I do not see what these speeches before the Council have to do with the reasonableness of the rates, to start with; and I do not think that Mr. Harris' speeches or anybody else's speeches before the Council have any bearing on this case. We can not cross-examine Mr. Harris or any of these other gentlemen that Mr. Keeble is reading from.

Commissioner Meyer: Well, that is quite true, Mr. Henderson, and as I understand it these facts are not given as facts as having a bearing upon the reasonableness of the charge here, but as having a bearing upon the development of this present terminal arrangement.

Mr. Henderson: I understand Mr. Keeble was giving this as his own testimony and as facts, and he is reading there from minutes of the City Council of 1896, which was several years ago before the Tennessee Central came in here; as a matter of fact, there were only two roads

here. Now he is reading a lot of speeches there 327 made by different people, some of whom are dead. Mr. Jouett: I would just like to call the attention of the Commission to Exhibit Number 10, in which he gives the proceedings at this so-called meeting of the Traffic Bureau a few days ago, in which each man made his speech.

Mr. Henderson: That is a certified copy of those

minutes?

Mr. Jouett: Yes, sir; and this is just the history,

and it is important to get the history.

Commissioner Meyer: With the understanding this is a history I think it should be continued, but do not give us any more of these speeches than necessary.

Mr. Keeble: Well, the book is full of statements of prominent men, most of them to that effect, some taking

a different view.

Now that amendment was incorporated in the bill. Now the records show that when that amendment was incorporated into the bill Mr. Barthel asked to be relieved from further work on the committee, and that was declined. Subsequently the records show that the bill was withdrawn. That bill was withdrawn, to my knowledge, on the ground they could not make the contract with that provision in it, together with any other provision that might be objectionable.

328 Mr. Jouett: Tell the circumstances.

Mr. Keeble: Well, the city government was notified by the president of the two railroads that they would not make such a contract. Subsequently, the ordinance was reintroduced without that provision.

Mr. Girard: This provision, Mr. Keeble, that you mention was with regard to any other railroads coming

in should have these switching rates.

Mr. Keeble: I read the resolution. That speaks for itself.

Mr. Girard: Did it pass the second reading of the Council? Have you the minutes to that effect?

Mr. Keeble: Yes; I have all the minutes here.

Mr. Girard: You have not shown whether it was ever passed.

Mr. Jouett: State briefly what was done with the ordinance.

Mr. Keeble: That ordinance was withdrawn.

Mr. Girard: After it had passed a second meeting, is that correct?

Mr. Keeble: Yes, sir; that was withdrawn. Subsequently the bill was reintroduced. I do not find exactly that page, but I find a reference on page 443 where the Union Depot bill was taken up. Mr. Barthel moved to

substitute the second printed bill in lieu of the former substitute bill. Carried. That was on May 14th.

Mr. Jouett: What year?

Mr. Keeble: 1898. Now, without going into detail, that bill was reported at page 460, recommended for passage on second reading, and to be recommitted, and the

bill passed the second reading and was recommitted on June 25, 1896. At page 479 the bill passed upon its last reading.

On July 9, 1896, as appears at page 483, the Mayor returned that bill with his veto. I have a copy of his veto, which I will file as an exhibit to my statement.

Mr. Jouett: Will you read that part that is relevant

to this particular question?

Mr. Keeble: I will read the part that I have reference to in order to call the Commissioner's attention to that.

"Referring to the five acres of ground in streets and alleys to be closed and quit-claimed to the Terminal Company without consideration, I beg to say that we should always keep in mind the fundamental principle that the streets belong to the public and must be used for the public benefit, and if the right to use these streets, which are the property of the people, is a grant of value in the market or to any corporation, it is manifest that the grant

should not be given without just compensation, and 330 this compensation I am of opinion must be of direct or indirect value. This being true, under conditions to be agreed upon between them, would not be an excessive, but just and right compensation to the city for

this valuable franchise and concession."

When the bill came back to the Council the action of the council on this veto message was postponed for a while, and in the meantime the message came to the chairman of the committee, to my knowledge, from President M. H. Smith, saying that he need not make any effort to pass this bill over the Mayor's veto, as the railroad was not willing to make a contract with the city even though the Council would make it, in the face of the Mayor's position as expressed in his veto. That ended the matter for that year.

The Tennessee Centennial came on in 1897, and the people realized for the first time the absolute necessity for better facilities, and so in 1898 the city government reopened the matter with the railroads. I was no longer connected with the city government at that time, but had some connection with the preparation of the ordinance, being employed by the Terminal Company to take the old ordinance and redraft it with some changes with re-

gard to boundaries, etc., and the city made a con-331 tract with the railroad companies without this provision in reference to the use of the terminal facilities by other railroads.

Mr. Jouett: What was the public feeling on the sub-

ject at that time?

Mr. Keeble: The public feeling had changed; there was no opposition to the bill of any consequence. Even such men as Colonel A. S. Collier and Mr. J. M. Head, who had led the opposition to the bill in 1896, advocated it. Colonel Collier had a number of newspaper articles that I remember very distinctly.

Commissioner Meyer: Is not the interest of the city there in the abandonment of streets, and would these carriers not have had the right, under this charter of March 21, 1893, to proceed to perform terminal services

within the limits of that charter?

Mr. Keeble: I did not catch that, your Honor.

Commissioner Meyer: These ordinances which were sought here were primarily for the purpose of abandoning certain streets in order that certain plans for the enlargement of terminal facilities might be carried out, and could not those joint terminal services have been per-

formed under the charter of March 21, 1893?

Mr. Keeble: There was not any Terminal Company in existence in March 21, 1893, except on

paper.

Commissioner Meyer: As I understand it the Louisville & Nashville and the Nashville, Chattanooga & St. Louis are the successors of the Louisville & Nashville Terminal Company, which was chartered March 21, 1893.

Mr. Keeble: That is not the way I understand it, and I think I can show your Honor that you are incorrect

about that. I am coming to that about now.

Commissioner Meyer: Very well, I am referring to Article 3 again of the petition in this case, where this date appears and the extract from what is there represented as the charter of the Louisville & Nashville Terminal Company.

Mr. Keeble: Yes; I am familiar with that section, but I am not prepared to admit the correctness of that provision of the petition, except so far as that may be one part of the charter of the Terminal Company, but I

am coming to that point right now.

Commissioner Meyer: All right.

Mr. Keeble: Now I have explained to your Honor, as best I could, the history that led up to the construction of these terminals by these two railroads.

This contract, as will appear when it is filed and shown to your Honor, was a contract made between the city of Nashville, the Louisville & Nashville Terminal Company, the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway.

Mr. Jouett: Where is that?

Mr. Keeble: I haven't got it here; they did not send it.

At that time the Louisville & Nashville Terminal Company was nothing but a piece of paper; it did not have a foot of ground, it did not have a foot of track, it did not have a dollar in the treasury, although it had been chartered some years before.

Now I have a copy of that charter, which I would like

to file as an exhibit to my testimony.

The charter was taken out, as you suggested, on the 21st of March, A. D. 1893. An examination of that charter will show that the Terminal Company not only was authorized to acquire property and construct terminals as outlined in that petition, and it was also authorized, as I will read from the charter—

"This corporation shall have the power by pur-334 chase, lease or assignment of lease, to acquire and hold and to lease to others, such real estate as may be necessary for the above mentioned purposes of this

corporation."

And further, in another place:

"The said corporation may lease to any railroad company or railroad companies its freight and passenger depots, or stations, and its other terminal facilities, located at any place where the line or lines of said railroad company or companies may terminate, or through which they may pass, and such lease may be upon such terms and for such time as may be agreed upon by the parties.

"Said railroad company or companies may severally or jointly, or jointly and severally, guarantee the principal and interest of such bonds as may be issued by such Terminal Bailroad Corporation, and may in like manner guarantee the performance of any other contract that said Railroad Terminal Corporation may make in regard to its corporate business.

"The said railroad company or companies may subscribe to any of the capital stock or bonds that may be issued by said Terminal Railroad Corporation, and said

Terminal Railroad Corporation may acquire, hold 335 or dispose of the bonds or capital stock of railroad companies or other terminal railroad companies," etc.

Commissioner Meyer: Does that charter contain a

preamble?

Mr. Keeble: No, sir.

Commissioner Meyer: What are the purposes for which the company is organized specified in the charter? Mr. Keeble: I will read them in after enumerating

the general powers.

"And in addition to the above powers said corporation shall have the power to acquire in this or any other State or States, and at such place or places as shall be found expedient, such real estate as may be necessary on which to construct, operate and maintain passenger stations, comprising passenger depots, offices, buildings, shops and storage yards and freight stations, comprising freight depots, warehouses, offices and freight yards, round-houses and machine shops, also main and side tracks, switches, cross-overs and turn-outs, and other terminal railroad facilities, appurtenances and commodities, suitable in size, location and manner of construction to perform promptly and efficiently the work of receiving

and transferring all passenger or freight traffic of railroad companies with which it may enter into contracts for the use of its terminal facilities at such place or places. Such corporation shall have the

power to purchase"-

Commissioner Meyer (interrupting): Without reading farther, does not that make this company a terminal company?

Mr. Keeble: I have my views about that, but as a witness I do not feel like expressing them, because I feel that is rather a question of argument than of testimony.

Commissioner Meyer: All right. Now were there in existence at that time general statutes in the State of Tennessee governing the incorporation of railroads?

Mr. Keeble: That was the only way they could be incorporated, and this was incorporated under that statute.

Commissioner Meyer: But this is a special charter. Mr. Keeble: No; this is not a special charter. We have not had a special charter in Tennessee since 1870.

Commissioner Meyer: Who enacted that document?
Mr. Keeble: The Legislature enacted that document.
The Legislature enacts a statute under which any five persons can incorporate.

Commissioner Meyer: I understand; that is an administrative act, but this is a legislative act. Now my

question is-

337 Mr. Keeble (interrupting): No, your Honor, the Legislature—prior to the Constitution of 1870 we had general acts under which charters could be taken out, sometimes through the secretary of State's office, sometimes through the chancery or circuit courts, and the majority of our important charters were granted directly by the Legislature, and in those charters they put such powers, privileges and immunities as the Legislature saw fit. In 1870 we adopted a new Constitution, and in that Constitution it was expressly provided that the Legislature should not grant any more special charters, but they should pass general laws under which the corporations should be incorporated.

Commissioner Meyer: I understand. Is this charter

declared to be a public act?

Mr. Keeble: This charter is not a public act. The act of the Legislature which passed these powers authorizes five people to become incorporated by going before a county court clerk and signing the certificate of incorporation. That is this charter.

Commissioner Meyer: Now then, why did these five people go to the Legislature instead of the county clerk.

under the general act?

Mr. Keeble: They did not go to the Legislature.

338 I thought I had stated that these five people never went to the Legislature; they went to the county court clerk.

Commissioner Meyer: Then the document to which you have been testifying here is not an act of the Legis-

lature i

Mr. Keeble: It is a charter of incorporation; it is not an act of the Legislature, no, sir.

Commissioner Meyer: It is rather the articles of incorporation under the general State law?

Mr. Keeble: Exactly so.

Commissioner Meyer: And not a special legislative

Mr. Keeble: Exactly so.

Commissioner Meyer: That clears up some difficulties that I had in listening to your testimony.

Mr. Keeble: Well, possibly, being so familiar with that myself I did not realize that you did not know our

particular method of incorporation here.

Commissioner Meyer: There is a distinction between the articles of incorporation and a charter. A charter, the way that term has been generally used in this country, is that special act incorporating particular companies, generally during times preceding the enactment of a general statute of incorporation by the Legislature.

339 Mr. Keeble: I am aware perhaps that is strictly the correct way, but we have been so long here ac-

customed to incorporating companies under general acts that we speak of it as a charter. Our decisions mention just such papers as this as the charter of a corporation.

Commissioner Meyer: Very well. We understand, then, that these are the articles of incorporation under

the general law.

Mr. Keeble: Yes, sir.

Commissioner Meyer: Now the powers enumerated in these articles were the powers given to such corporations under the general act of the State of Tennessee?

Mr. Keeble: Yes, sir; that is true.

Commissioner Meyer: And, therefore, this corporation, the Louisville & Nashville Terminal Company, has, through those articles of incorporation, all the rights and privileges of that general law, and assumes all the duties and responsibilities under that general law.

Mr. Keeble: Unquestionably; there can be no doubt

about that.

Commissioner Meyer: Now I wonder whether there is that enumeration of powers in the articles of incor-

poration.

Mr. Keeble: Those enumerated powers are 340 copied literally from the act of the Legislature when the Legislature passed a general law authorizing the incorporation of Terminal Railroad Companies. Now when that act was passed they provided that this corporation should have all of the general powers of corporations like suing and being sued, and then they set out specifically in that general act the powers and duties of this corporation.

Commissioner Meyer: Now let me ask you another question. I understood you to refer to a general act authorizing the incorporation of railway terminal com-

panies.

Mr. Keeble: Exactly so.

Commissioner Meyer: Now are there in existence two general acts in the State of Tennessee, one authorizing the incorporation of railway companies and another authorizing the incorporation of railway terminal com-

panies?

Mr. Keeble: I have never referred in my testimony consciously to any act other than the one to incorporate a railway terminal company, but there are two acts. There is a general statute which provides for the incorporation of railroad companies and an act which provides for the incorporation of railroad terminal companies.

341 Commissioner Meyer: That is my question.

There are in existence then these two separate and distinct general statutes?

Mr. Keeble: There are in existence these two sep-

arate and general statutes.

Commissioner Meyer: So that this Louisville & Nashville Terminal Company, organized March 21, 1893, was organized under the general railway terminal act?

Mr. Keeble: Exactly so.

Commissioner Meyer: And not under the general act?

Mr. Keeble: Exactly so.

Commissioner Meyer: Well, I think we are getting

it straightened up.

Mr. Keeble: Now these two railroad companies were organized long prior that and by special act; one by the legislative act of the legislature of Kentucky and the other by the legislature of Tennessee. Now, as I stated before, although this charter, or articles of incorporation, was issued to these parties in 1893, at the time that this contract was made with the city the Terminal Company had no property, owned no track, had no money in the treasury and had not done any single thing looking

toward a performance of its duties or an exercise

342 of its powers.

During the process of the consideration of this first ordinance of 1896 the two railroad companies and the Terminal Company began to arrange to carry out this program which was outlined in the ordinance, and in order to do that, on the 27th day of April, 1896, the Nashville, Chattanooga & St. Louis Railway leased to the Terminal Company for a period of 999 years, rather than 99 years, as was stated by Mr. Jouett—

Mr. Jouett (interrupting): The 99 years was a sub-

sequent change.

Mr. Keeble: Yes, sir—certain properties described in the contract which the Nashville, Chattanooga & St. Louis Railway then owned with as perfect a title as the railway company could hold in this State—just how much of that is fee—some of it was in fee, the real estate, probably, and the other was leased. Now at the same time the Louisville & Nashville Railroad Company, or about the same time, on August 7, 1897—no, the 27th day of April, 1896, the Louisville & Nashville Railroad Company executed a lease to the Terminal Company of certain property and trackage rights that it had in the city of Nashville for a similar period.

343 Mr. Girard: Mr. Keeble, these two copies of leases will also be filed?

Mr. Keeble: Yes, sir; we will file copies of all these

Mr. Jouett: They are very voluminous. You might

read them and see whether you want them.

Commissioner Meyer: I am inclined to think we have taxed the reporter at least sufficiently for this evening. Do you think if we begin at 10 o'clock in the morning we will be able to finish by 6 o'clock tomorrow evening!

Mr. Jouett: Yes, sir.

Commissioner Meyer: If there is any doubt about it we will come in at 9 o'clock.

Mr. Jouett: I do not think there is a possible doubt

about it.

Commissioner Meyer: I see it is impossible to conclude by noon, but I would like to have it reasonably certain for tomorrow evening.

Mr. Jouett: I do not think there is the least shadow of doubt about it, because we could easily conclude by that time. I think it would really facilitate matters if we adjourned until 10 o'clock instead of an earlier 344

hour, because I have been in court even since I have been here practically and have not been able to look over matters.

Commissioner Meyer: We will take a recess until 10

o'clock in the morning.

Now, if some of you gentlemen who have access to the law books will bring that general statute, I have a curiosity to see it.

Mr. Keeble: I will bring it tomorrow.

Mr. Jouett: I had expected to introduce that statute

and call your attention to it.

Commissioner Meyer: And then, which is chiefly a matter of argument, perhaps, but it is something that will arise in this case, and I can not help but think of that line of argument that is bound to be precipitatedif this general terminal statute, under which this Louisville & Nashville Terminal Company was incorporated, empowers and requires companies incorporated thereunder to perform terminal services, then the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway assumed those duties and obligations of the general statute, and, whatever they may be, may they not be required today to perform the functions pre-

scribed in that statute? But that is a matter of

345 argument before the Commission.

Mr. Keeble: I think that question-I have lived

with that question for about 12 years and I think we will be able to point out the line of argument that your Honor will see our position at least.

Commissioner Meyer: Very well.

Mr. Jouett: In the light of this statute we think it

will be very simple when you get to it.

Whereupon at 10:30 o'clock P. M., on the 25th day of March, 1914, the hearing in the above entitled matter was adjourned to March 26, 1914, at 10:00 o'clock A. M.

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Nashville, Tennessee, March 26, 1914. 10:00 A. M.

Met Pursuant to Adjournment. Parties Present as before.

Commissioner Meyer: You may proceed, Mr. Keeble.

JOHN B. KEEBLE resumed the stand.

Mr. Keeble: I believe that when we discontinue last night I had read into the record certain parts of this socalled charter of the Louisville & Nashville Terminal Company, which your Honor probably subsequently de-

nominated the articles of incorporation.

To clear up what I was trying to explain at that time I will say, briefly, that in 1893 the general incorporation laws of the State were amended so as to provide for the organization or incorporation of the Terminal Company, with the powers and duties set out in the act of the legislature, which was Chapter 15 of the Acts of 1893, and their charter or these articles of incorporation,

or charter, from which I have read, were obtained by the incorporators under and by virtue of that particular act, together with the general statutes of the State, which authorized the incorporation of companies generally with such powers as any particular act

might prescribe.

Now, about that time the Honorable Commissioner asked me some questions as to the duties and obligations of the Terminal Company under this charter, or under these articles of incorporation-I keep saying charter because we are so in the habit of saying that here-and the further question as to whether or not those obligations would not follow and impress the property even though the property should come into the possession and control of a railroad company.

Now, I have very distinct and clear views, as far as I can see them, on that proposition, but I would like to put into the record as evidence my interpretationCommissioner Meyer (interrupting): Well, that

would be argument anyhow.

Mr. Keeble: Yes, and therefore I would like to ask permission that that matter might be discussed in the brief to be filed rather than in my statement.

Commissioner Meyer: And before the whole Com-

348 mission as a matter of argument.

Mr. Keeble: And before the whole Commission

as a matter of argument.

I point out, however, as a matter of fact, that this charter is evidently drawn with great care in certain particular directions. It does provide on its face that the Terminal Company has a right to acquire property, and it provides that it may acquire property for the purpose of doing certain things in the way of construction of stations, terminal facilities, and the like.

It also says it may operate and conduct the terminal system, but it particularly also authorizes the lease or sale, not of its franchise, but of its physical properties, to any railroad upon any terms when it may see fit to do it, or upon any terms they might agree upon. I call attention to that part of the language as a matter of fact.

Now, passing from that, as I stated last night, when we got to that point, or had stated when we got to that point, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company, on the 27th day of April, 1896, had executed leases to the Terminal Company conveying certain specific property, copies of which leases will be filed as ex-

hibits.

349 I now desire to state that on the 15th day of June. 1896, the Terminal Company conveyed, by lease, to the two railroads, not only all of the property that had been leased on the 27th of April, 1896, to the Terminal Company by the railroad, but all property that it owned or might subsequently acquire. It is a fact that there was no change in the physical condition of these properties between the 27th of April, 1896, and the 15th day of June, so that it is a fact that the only title that was ever vested in the Terminal Company, in reference to the properties leased to it by the two railroad companies on the 27th of April, 1896, was a leasehold interest for a period of less than 60 days, and it is also a fact that there was no change, either in the equipment or construction of the properties during that period, and during that period the Terminal Company exercised no official act further than to authorize the execution of these papers. Now, subsequently, some time a year or two later, a

mortgage was executed by the Terminal Company and by the two railroad companies, conveying all of these particular properties to secure a mortgage, or secure

the issuance of bonds up to two millions of dollars.

I do not remember now the exact date of that, but a copy of that mortgage will be filed in the record

as an exhibit to my statement.

Mr. Keeble: Now, on the 3d of December, 1902, there was a modification of the leases existing between the

Louisville & Nashville Terminal Company and the 351 two railroad companies. A copy of this lease is filed as an exhibit to this statement and will be made a part of the record.

Now, in brief, the terms of this modification were:

First: to modify the length of time that the lease was to run as originally executed, and to make that lease for a period of 99 years rather than a period of 999 years.

Second: to eliminate from the contracts of lease, both from the Railroad to the Terminal Company, and vice versa, these original properties that had been vested in the two separate and distinct Railroads, so as to leave the fee in those properties in the Railroad Companies, as they were prior to the lease of April 27, 1896. None of these properties, as will be seen from an examination of all these papers, extended north of Gay Street on

the north or south of Spruce Street on the south.

Mr. Keeble: On this map I have indicated in the

red letters A at Gray street, and B, at Spruce street, now 8th Avenue south, and called on this map 8th Avenue south, but it was between these two points that all the property that is described in these leases, both from the Terminal Company to the Railroads and from the Railroads to the Terminal Company, is situated. I call your attention to that specifically for the reason that with a very few exceptions, as will be shown later, the industries to which cars are switched by these different railroads are located entirely without that territory.

Now, I want to file as an exhibit to my statement a small map which will be identified and proved by Mr. Trabue, an engineer of the company, which illustrates the different properties in this area, the fee to which at one time or another was in these various companies. I am prepared to testify to this with the exception of the accuracy of the measurement, because I have been over these papers in the past 12 years a good many times and know that these leases which I have mentioned deal with

these specific pieces of property.

Your Honor will sec, and I call your Honor's atten-

tion to the fact that the property in this area which is the same area I have pointed out on that map, Exhibit

353 1, is marked off in different colors. All the property and all of the boundaries surrounded by green was property that was in the Nashville, Chattanooga & St. Louis Railway on April 27, 1896, when it was leased to the Terminal Company and held by the Terminal Company for a period between April 27, 1896, and June 15, 1896, when it was leased back to the joint Railroads, the two Railroads, and subsequently, by that modification, eliminated entirely from the arrangements.

The property in blue, which is a comparatively small part of this property, was property which was, at the same times I have mentioned, that is to say, on April 27, 1896, vested in the Louisville & Nashville Railroad Com-

pany.

The property which is surrounded by red lines was the property which at that time was owned by the Louisville & Nashville Terminal Company, or subsequently acquired by it. I am not prepared to say how much of it was in the Louisville & Nashville Terminal Company and how much was subsequently acquired by it, but that was property the title to which was never in either one of these railroads, except by virtue of the lease of June 15, 1896.

Now, your Honor will see, on an examination of this map, that the property which was acquired by the Louisville & Nashville Terminal Company under and by virtue of its charter, with the exception of that short time in which it held a leasehold interest in these other properties, was not joined together, was in several separate and distinct titles, and you will readily see, on examination of this map and other maps, that in and of itself it would be of no value as Terminal property, for the reason that it is not reached by any tracks aside from the tracks of these two Railroad Companies.

(The map, so offered and referred to, was received in evidence and thereupon marked Defendants' Exhibit 1, Witness Keeble, received in evidence March 26,

1914, and is attached hereto.)

nor is there any inlet or outlet to it.

Mr. Keeble: Now, at the time of all of these contracts which I have had reference to, with the exception of the modification in 1902, there was no other railroad in Nashville except these two Railroads.

There is one contract that I forgot to read into the record. After the two Railroads had acquired by these leases, as stated here, on the 15th day of August,

355 1900, they entered into a joint contract between

themselves, the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company, looking toward the operation not only of the properties which are described in these leases and mortgages, and not only the properties which are embraced in this territory as illustrated by these maps, but the operation of these properties or the joint operation of these properties and all industry tracks within a certain territory in and around Nashville and all other tracks. This contract, as stated, was entered into on the 15th day of August 1900, copy of which will be filed as an exhibit to this statement.

I should have stated with regard to the modification of December 3, 1902, that another modification of that agreement was in reference to the rental that was to be paid by the Terminal Company to the Railroad Companies. I omitted that. It was not particularly pertinent.

but that was one of the modifications.

Now, in 1893, as I will show—I am satisfied I can file, and if I can not I will withdraw this statement—I have sent for the journal—when this act which was finally passed in March—I think March 17, 1893—was be-

356 fore the Senate, an effort was made to amend that act so as to provide that it should be open to all of the railroads—the terminals constructed under this act should be open to all railroads alike, and that was

defeated.

In 1901, just the session of the legislature prior to the subscription by the city of Nashville to one million dollars' worth of stock of the Tennessee Central Railroad, and when the Tennessee Central Railroad was approaching Nashville from the direction of Lebanon, having acquired properties almost into the city, a bill was introduced into the Tennessee legislature to amend this act so as to compel all terminal companies incorporated under that act to permit other railroads, upon the payment of an equitable amount, to share the use of these terminals, and that bill was defeated.

I simply state that to show the fact that these questions have always been under discussion, as shown by that report, from the time these terminals were built, and that in no instance, either by the City Council's action or by legislative action, has this been placed in the contract between the city and the railroad, or in the fundamental law under which this company was organized.

Mr. Jouett: Mr. Keeble, in order to show clearly the final result of the negotiations that were carried on through these various contracts, will you

state briefly to the Commission now just what the status of that property is; that is, the property originally owned by the Terminal Company, and the relation of the two railroads to that property and to the other property within the limits of the city of Nashville.

Mr. Keeble: As I understand those title cases the title to all property on this little map, which is marked

Exhibit-

Commissioner Meyer (interrupting): Keeble Ex-

hibit Number 1.

Mr. Keeble: All of the title to all of this property in green lines is now in the Nashville, Chattanooga & St. Louis Railway as fully as any railroad company in Tennessee can hold property. There is some dispute as to whether a railroad can have a fee title, or whether they merely have the right to use it as long as railroad purposes require it, or they do actually use it that way, but at any rate, whatever title a railroad can, under the laws of Tennessee, have to any property, the Nashville, Chat-

tanooga & St. Louis Railway has to all of this prop-

358 erty in the green lines.

All of this property in blue lines is held by the Louisville & Nashville Railroad Company in the same

way.

All of this property in red lines, the title is in the Louisville & Nashville Terminal Company, subject to a lease of 99 years from the date of the modification agreement, to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company.

The title to all of the industry tracks radiating from this property, which is described in this little map, is now, as it always has been, in either the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway Company, according to which one of the companies originally constructed that track.

Mr. Jouett: By industry tracks, do you not mean all

tracks of either line within the city of Nashville?

Mr. Keeble: The main line tracks and all operating tracks have always been, with the exception of that short period between April 27, 1896, and June 15, 1896, in the respective railway companies; the Louisville & Nashville Terminal Company never built a main line and never

built an industry track; it merely built this switch 359 yard here and roundhouse and coal chutes and

things of that sort.

But, to illustrate what I mean by this exhibit which you have before you, which was filed by a former witness

in the case, and upon which I have made these marks ${\bf A}$ and ${\bf B}$ —

Commissioner Meyer (interrupting): Petitioners' Exhibit Number 1.

Mr. Keeble: What I mean by industry track is illustrated by going upon the east side of the Cumberland River.

You will find the track there which seems to end at J. P. Murray's marked with the letter C in red, on Exhibit 1. Now following the line of that track along the river, in a northerly direction, it will appear that that track ultimately entered upon the main line of the Louisville & Nashville Railroad at a point which I shall mark in red D. That is the end of that industry track. That is one of them. Now, there are many others in various situations all through the city.

Now that track, nor none of these tracks, was ever built by, owned by, or leased to, the Louisville & Nashville Terminal Company, and there is no other industry

track or no other industry unless one that happens to be fronting on this limited area, which has been described, that—

Commissioner Meyer (interrupting): Were all of the industry tracks not within the terminals constructed by the railroads themselves on the same basis?

Mr. Keeble: On what same basis?

Commissioner Meyer: Did the shippers contribute to

the construction of the industry tracks?

Mr. Keeble: Some of them did, but some of them did not; I do not know what relative proportion that is. Some of these industry tracks have been built under contract with the shippers, where the shipper furnished the land and the railroad company laid the rails and the shipper paid the rental; some of them have been built by the railroad company; I can not answer how that is.

Mr. Henderson: Mr. Keeble, is it not a fact that some

of them are built and owned by the shipper?

Mr. Keeble: That may be so, Mr. Henderson; I do not know whether it is or not. But since I have been connected with the railroad company I know I have drawn for the Louisville & Nashville Railroad Company—I never had anything to do with any of the industry

tracks on the Nashville, Chattanooga & St. Louis— I have drawn a good many contracts and I do not

think any two of them were alike.

Commissioner Meyer: Well, do you recall any in which the industry itself did more than to furnish the right of way and do the grading?

Mr. Keeble: I do not recall whether they did anything more than that, unless perhaps occasionally they agreed to pay a rental on the iron.

Commissioner Meyer: And furnish the ties, or did

the carrier furnish the ties?

Mr. Keeble: I can not say about that, your Honor;

I have not charged my mind with that.

Commissioner Meyer: Well, you can't go into that. Mr. Jouett: We have some other witnesses to tell that.

Mr. Keeble: I have never tried to keep up with that; I would not like to answer that question. It may be that

was so, and it may not.

Mr. Jouett: Now, state what is the status of each company with reference to all of the tracks, the main tracks, leads, industries and every other sort within the limits of the city, of each of these railroads?

Mr. Keeble: All of these tracks are owned either absolutely, or those that are on that limited area 362 described in red by lease by these two Railroad

Companies.

Mr. Jouett: What are the relative rights of each to these tracks under this contract of August 15, 1900, form-

ing the Nashville Terminals?

Mr. Keeble: As I understand that contract, which has been read into the record, under that contract it was agreed that all of the terminals or industry tracks of both railroads and all of the main lines both of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, entering Nashville and in Nashville, should be onerated under this contract as a joint terminal and depot, and the expense of that has to be borne according to the proportion on basis of that agreement.

Mr. Jouett: Each company to have trackage rights

over all of the railroads?

Mr. Keeble: Each company to have trackage rights Now under that contract each company furnished a certain number of engines-

Mr. Jouett (interrupting): Which shows here.

Mr. Keeble: Yes; and each company selected its general manager as one of the members of the board of control, and there was a third man, mutually agreeable to

both companies, known as the superintendent of terminals, and that will be explained by another witness, and they have operated those terminals

from the time they were opened, I think, as early as September, 1899, or about that time, to date, under substantially the same arrangement.

Mr. Jouett: What do you understand is meant by the term "Nashville Terminal Company"? Is that a corporation or partnership or anything more than a mere

joint organization?

Mr. Keeble: That was nothing more nor less than a name used to designate the terminal limits of this joint operation. That is not the name of a corporation; it is a mere designation of the territory covered by this mutual arrangement, and has been so decided by our courts, by many decisions, that the two railroads are jointly responsible for everything that happens there. An employe of the Nashville Terminal Company is not an employe of the Terminal Company but an employe of the two railroads, and in all of this time, I want to state the Terminal Company has never owned an engine, it has never owned any coal chutes, or roundhouses, it has never owned any coal chutes, or roundhouses,

never operated any roundhouses or coal chutes, it has never employed any operatives in the handling of trains. Whether rightly or wrongly, they construe their charter to authorize them to lease their properties as a whole, without leasing their franchise in

any way.

Mr. Jouett: It has never done any business of a physical character whatever, has it?

Mr. Keeble: Never has. Mr. Jouett: That is all.

Commissioner Meyer: Mr. Henderson, do you wish to ask any questions?

CROSS-EXAMINATION.

Mr. Henderson: Mr. Keeble, what is the ordinance that you mentioned?

Mr. Keeble: Sir?

Mr. Henderson: What is the date of that first ordinance that you mentioned, the ordinance of the City Council which carried a provision that the Terminal Company would have to switch freight arriving at Nashville via any line?

Mr. Keeble: You mean when that was introduced?

Mr. Henderson: Yes.

Mr. Keeble: I do not know when it was introduced.
Mr. Henderson: It was in 1896, but I have not
found any date here when it was introduced.

Mr. Henderson: Well, what date was it passed? I understood you to say that ordinance passed the second reading.

Mr. Keeble: Yes, sir.

Mr. Henderson: That was in 1896?

Mr. Keeble: 1896.

Mr. Henderson: Now, that particular ordinance was withdrawn after it passed the second reading?

Mr. Keeble: That is my information.

Mr. Henderson: Do you know who had that ordinance withdrawn and why it was withdrawn after the

passing of the second reading?

Mr. Keeble: Yes; I know why it was withdrawn. Because those who were supporting the ordinance were of the opinion that it would not be accepted by the Railroad Company and there was no use going any further with it.

Mr. Henderson: Because it was not satisfactory to

the railroad?

Mr. Keeble: Yes, and one of the particular grounds

was that ground.

Mr. Henderson: Yes. Now, when was the second ordinance, which was vetoed by the Mayor, and which had that particular feature stricken out of it?

Mr. Keeble: You mean, when it was introduced?

Mr. Henderson: When it was introduced or passed.
Mr. Keeble: I do not remember the date when it was introduced. I had some dates here as to when it was discussed and passed, last night, but I have lost my memorandum about it. I can find that for you without any particular trouble.

Mr. Henderson: If you have the approximate date,

I do not care about the month.

Mr. Keeble: I have it right here. It was passed on June 8, 1896, page 460, of this minute book.

Mr. Henderson: Is that the first one?

Mr. Keeble: Sir?

Mr. Henderson: Is that the first one? You said that the other one was in 1896 some time.

Mr. Keeble: I told you just a little while ago that

the first ordinance was withdrawn in May.

Mr. Henderson: May, 1896? Mr. Keeble: Yes, sir.

Mr. Henderson: Now, the second ordinance I understood you to say was passed and vetoed by the Mayor

some time in June, 1896? Mr. Keeble: Yes, sir.

Mr. Henderson: Now, when was the last ordinance filed finally passed?

Mr. Keeble: It was in 1898; I do not remember the

date.

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Mr. Henderson: Then, your leases that you have referred to here, as between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, and contracts dated 1896, were made two years prior to the passing of the ordinance under which you finally built the terminals?

Mr. Keeble: That is true; in 1896, when these leases were passed and executed, in April, the original ordinance, which was withdrawn in May, it was supposed could not be passed, and in order to get in position where they could get the money to construct these terminals, the railroads were going as far towards carrying out their plans as possible. When this ordinance was defeated in 1896, why, the matter was hung up for a while, and it remained in statu quo, and nothing more was done under it as between the Terminal Company and the Railroads, until the matter was reopened in 1898. These papers were not canceled because neither side had utterly aban-

doned the idea of finally erecting these terminals.

In fact, this matter had been agitated by the city and the railroads for more than 10 years before it

was finally agreed upon.

Mr. Henderson: Now, when that terminal station and these terminal properties were finally built, did not the city condemn a lot of property and stand a large part of the expense of getting the necessary ground to put

up these facilities?

Mr. Keeble: No; the city did not condemn any land or pay for any land that was embraced in the terminal station or limits. The city did condemn two or three pieces of property on Walnut Street, east of the terminals, for the purpose of changing the location of Walnut Street and permitting that street to be lowered, so as to bring the old street low enough to enter the freight station. If you have ever examined that property you will notice that where the street goes down below grade and enters the station there, that is the place where old Walnut Street was. Now, the city agreed to make a new Walnut Street, and it condemned the bit of ground running. I believe, from the first alleyway south of First Street on the east side of Walnut to the first alleyway

north of Broad Street on the east side of Walnut, 50 feet wide. Now, the city paid for that.

Then the city contributed, as I stated last night—I don't remember what that one hundred thousand dollars was paid for, but it was for some portion of the viaduct and approaches, and the city did pay some vouchers arising from injury to abutting owners where the approaches were upon city property, but in so far as

the property inside of the terminal limits was concerned, the city neither condemned any for that nor paid for it.

Mr. Henderson: That damage, and the money they spent, was brought about, however, and made necessary by the construction of these terminal facilities, was it

not?

Mr. Keeble: Unquestionably the city—and that was one of the points of the controversy for a long time; some people in the city did not want the city to bear any of the expense. The railroad companies wanted the city to bear more than the city actually finally bore. For instance, there was a difference of opinion as to the question of Church Street. Before the erection of these terminals, if a vehicle or foot passenger went from Walnut Street or from the old station on Church Street to any

point in the western part of the city it was necessary to drive over a series of tracks, the widest part of the terminal yards—I don't remember, but it was several hundred feet—and the railroads naturally contended at that time, it was natural for them—I do not say rightly or wrongly; I am not passing on that question—that it was to the great advantage of the city to have a viaduct there, and if they were willing to build a viaduct and pay for it the city certainly ought to be willing to pay for the approaches and the injury to the abutting owners. And there were various and sundry arguments.

One of the arguments that the railroads made to us—I was then representing the city—was the fact that if it got out that the railroad companies had to pay for properties and damages it would cost two or three times as much, as everybody knew they always had to pay two or three times as much in damages as anybody else, but be that as it may, it finally expressed itself in these contracts and the city did pay money as outlined in the con-

tract.

Mr. Henderson: How much did that actually cost the city?

Mr. Keeble: I really do not know, sir; it was some-

thing over one hundred thousand dollars.

Mr. Henderson: Was it not something over a

371 half million dollars?

Mr. Keeble: No; nothing like that; as I am informed. I would not say it was not, but that has never been my information. I have not kept the accounts or the books. It would be easily demonstrated, but I have never had that impression, in fact, I never charged my mind with the details.

Mr. Henderson: I do not know that that is true. I heard it.

Mr. Keeble: Well, a great many things we hear are not true.

Mr. Henderson: Now, Mr. Keeble, is it not true that this thing started over the fact that the passenger station and facilities of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis at Nashville were not suffi-

cient to take care of the business?

Mr. Keeble: I guess that neither the city nor the railroad would have been willing to spend all that money. if either one of them had regarded the facilities as adequate. I do not suppose any railroad system would spend approximately two million dollars unless they felt the business of the town demanded it, and on the other hand.

I do not think the city would have been willing to 372 have closed up these streets and put in part of the money unless they felt like it was advantageous

to it.

Mr. Henderson: Yes; and being inadequate, the city asked the railroads to construct facilities that would handle the business. Now, is it not a fact-

Mr. Keeble (interrupting): Now wait a minute; is

that your testimony or your question?

Mr. Henderson: I asked you if that is not a fact.

Mr. Keeble: Well, now, as I explained, it is a fact that the people in the city felt like they ought to have better terminal facilities, a new passenger station; the railroad realized the fact they ought to have larger terminal yards, and they were willing and did build a depot more expensive and more elaborate than they thought was reasonably necessary, but the people wanted a passenger station, the merchants wanted freight facilities, the railroads wanted freight facilities primarily, and also passenger facilities; but there was a large argument as to how that money should be divided. The railroad people were not willing to do this unless they could build for what they regarded as the future, and beyond even the necessities as either side regarded them at that time.

When these terminals were built they were sup-373 posed to be big enough to cover a great many years, and the town would have to grow considerable to it even to fill them up, but in the rapid increase in business in 1905 and 1906, it became apparent that everybody

had misjudged the real necessity of the traffic.

Mr. Henderson: Mr. Keeble, is it not a fact that the history of these ordinances that you have stated here shows that the railroads were willing to construct these

terminals provided they could do it on their own terms?

Mr. Keeble: No; I do not think so, because I know that there were many changes made in the original proposition that was submitted to the city by the railroads finally, a great deal of correspondence on the question of where the boundaries should be, and the various proportions of expense of the maintenance of the viaducts, and the ordinances, as finally passed, was really an embodiment of Captain Harris' idea as expressed last night, of give and take; it was a compromise proposition.

Mr. Henderson: It is true, however, that the Louisville & Nashville and the Nashville, Chattanooga & St. Louis did refuse to construct these terminal facilities until that part of the colline

cilities until that part of the ordinance requiring them to switch to any other roads that might come

in here was stricken out?

Mr. Keeble: That is true. They took this position before the City Council at that time, that this was going to cause them to spend a considerable amount of money, that the Terminal Company had no money and no property that all the money that was to be used in the construction of these facilities was to come out of the treasuries of these two railroads, and they were not willing to spend their money for the erection of terminals, according to this idea, and then have any rival railroad build a line and simply connect with them at Vine Hill, we will say, or Shops Junction, and have the advantage of coming into their own terminals and into the industries on their own tracks, and compete for their business and leaving them with a paltry switching charge, and leaving them subject to governmental regulation at that.

Mr. Henderson: The city was unable to get the terminals constructed under terms that they wanted, and

took the best they could get, did they not?

Mr. Keeble: I have outlined that the best I could, the city was more anxious at that time for this particular development than the railroads. I happen to know that Mr. Smith regarded it as an inopportune time to construct these terminals, by reason of the recent financial depression of 1893, from which the country had not recovered, and he thought, and the railroads thought, and argued to the city when they were asking to have a conference about it, that they preferred to postpone this matter to a different day. I know that the City Council had great difficulty in getting a full hearing on this matter with the executives of either road,

and that the people of Nashville were peculiarly interested at this particular times, and urged this particular

time for the reason that they were going to have an exposition, and they wanted to have it ready for the people at that time. I know that I was greatly interested in it at that time, and know it was a good many months before we could get Mr. Smith interested in it at all toward arranging the enterprise at that time, and the city, as I stated a while ago, was more interested in the viaduct of Church Street, and in the opening up of a proper roadway on Broad Street and in a handsome passenger station—I mean the city as a whole, the popular voters, than they were in anything else, the merchants were

interested in switching facilities and freight advantages, and the railroad companies said, "We

are interested in the freight business more than anything else, and if we are going to do this thing we want to do it so as to take care of it for the future." Now, the city was interested in it, was anxious for it, and the railroad was finally willing to do it at this time, but so far as I know, and according to my best information and belief, would have preferred very much to have postponed it until financial conditions became better.

Now, that is the only way I can answer that.

Mr. Henderson: The city was, in fact, so anxious for it that they were probably willing to take it on almost any terms?

Mr. Keeble: No.

Mr. Henderson: Now, you mentioned last night the

first agreement—

Mr. Keeble (interrupting): I want to say this, about that; of course, I merely give my best judgment about it, but I have never known the citizens of Nashville to be so anxious for anything as to take it on any terms.

Mr. Henderson: You mentioned last night the first agreement between the Nashville, Chattanooga & 377 St. Louis Railway and the Louisville & Nashville.

as to trackage rights at Nashville, which was some time prior to this lease of 1896, in which all the terminal facilities were thrown together.

Mr. Keeble: Well, I do not know that the contract was quite that broad, as you state. The contract is in the record; it speaks for itself.

Mr. Henderson: I understood it was a trackage ar-

rangement.

Mr. Keeble: It was a trackage arrangement, but I do not remember whether the contract is as bad as you say—all the terminal facilities were thrown together.

Mr. Henderson: I say, prior to the time—Mr. Keeble (interrupting): In 1872.

Mr. Henderson: You misunderstood me; I asked if that contract was not prior to the time of the throwing together of all of the terminals, when they got certain trackage rights between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

Mr. Keeble: Yes; that contract was back in the seven-

ties.

Mr. Henderson: You do not know whether the Louisville & Nashville owned any stock of the Nashville, Chat-

tanooga & St. Louis at that time, do you?

Mr. Keeble: I do not know as a matter of fact if they own any now or not; I understand that they do; I 378 have never seen any of it, I never had any of it, I am not a stockholder or director, and while I assume it is a fact that they do own stock in the Nashville, Chattanooga & St. Louis, I have never heard it denied, I do not know as a matter of fact how much they have got, nor when they got it.

Mr. Henderson: You do not know that they did not

own any at that time?

Mr. Keeble: Sir?

Mr. Henderson: Do you know that they did not own any?

Mr. Keeble: In 1872? Mr. Henderson: Yes.

Mr. Keeble: To the best of my information and belief, if they owned any it was a small amount at that time. As I stated last night, I stated that they did not own the control of it, for the reason that Colonel Cole, as I understand, when this contract was signed, it was signed by Colonel Cole as president, and Colonel Cole kept the presidency up to the time when the Louisville & Nashville Railroad Company secured control, and then he retired. The Louisville & Nashville Railroad Company never owned the control during Colonel Cole's administration, if it owns it now, as I assume it does.

Mr. Jouett: I will say, Mr. Henderson, we expect

379 to show that by the secretary.
Mr. Henderson: All right.

Mr. Keeble: I don't know when; I don't know the date.

Mr. Henderson: That is all.

RE-DIRECT EXAMINATION.

Mr. Jouett: Mr. Keeble, speaking as a citizen, acquainted with the local conditions of Nashville, state what in your opinion has been the effect upon the city of Nashville of these improvements that it secured by this con-

tract with the railroads about which you have been testi-

fying?

Mr. Keeble: Well, I do not know that I am a competent person to testify about that. I have always thought that it was the judgment of the community that regardless of whether the terminals ought to be used exclusively by the two railroads, I think that it has been the unanimous judgment of the community that the city was much better off by having these facilities there. The only difference of opinion, so far as I know, was as to whether or not the railroad company ought to permit any other railroads to use them. I have never heard anybody talk any other way. I may be wrong about it.

Mr. Jouett: It is your opinion that it has been

380 a great benefit to the city?

Mr. Keeble: Well, I think so, because it has meant this: for many years there has been an adequate method of handling freight and passenger traffic that did not exist before. Now, possibly it has changed—some people who had property in that vicinity insisted that their particular property was injured, and doubtless it was, for residential purposes.

On the other hand, property on Broad Street and business property has enhanced many, many times since then. Property which you can get for \$50.00 to \$75.00 a foot 15 years ago, you could not buy now for less than

\$300.00 or \$400.00.

Mr. Jouett: Mr. Henderson interrogated you to quite an extent as to the motives of the city in making this contract, and as to their anxiety to secure the contract. I will ask you if you think any anxiety upon the part of the city at the time the contract was made to get the terminals presents any reason for its attempt to deprive the railroads of the rights given to them by that contract?

Mr. Keeble: Well, naturally I would not think so, but

I think that is likely a matter of judgment.

Mr. Jouett: Well, that is all.

381 RE-CROSS EXAMINATION.

Mr. Henderson: Mr. Keeble, just one question. Is it your opinion that the fact that the Tennessee Central Railroad built into Nashville damaged the city or did it

any good?

Mr. Keeble: Why, Mr. Henderson, I don't see how any sane man could think that anybody would assume the construction of a railroad, if it did not run 10 miles, damaged a city. On the contrary, my judgment is that the construction of the Tennessee Central into Nashville

has been a great benefit to it. I have never, either in public or private, ever entertained any other idea. don't see how any man could think anybody would think that a system as reputable and as long as that could be anything else but a benefit to the city of Nashville.

Now, so far as whether or not the city, as a corporation, is going to get any benefit, or whether it was a wise thing for the city to take stock in the railroad, that is a very different proposition. But, so far as the presence of the property here is concerned, I think a man would be a fool that would think any other way.

Mr. Henderson: Now, you were connected with the Louisville & Nashville Railroad, were you not, at 382 the time the Tennessee Central was trying to get

an entrance into Nashville?

Mr. Keeble: No, sir.

Mr. Henderson: You were not?

Mr. Keeble: No, sir; I was not a member of the Louisville & Nashville Railroad until after-not connected with the Louisville & Nashville Railroad until after the election in August, when the million dollar bond subscription was made.

Mr. Henderson: You lived in Nashville at that time?

Mr. Keeble: I lived in Nashville at that time.

Mr. Henderson: Do you or do you not know whether it is a fact that the Louisville & Nashville Railroad fought the coming in of the Tennessee Central, and did everything they could to keep the city from encouraging them to build that road?

Mr. Keeble: As far as I know about that, I know nothing more than any other citizen. I assume the Louisville & Nashville Railroad did oppose it, but as to how and when and where I do not know any more about that than any other man living.

Mr. Henderson: You were living here at that time?

Mr. Keeble: Yes, sir.

Mr. Henderson: And were familiar with the 383 things being done at that time?

Mr. Keeble: Yes, sir.

Mr. Henderson: From your knowledge of the conditions and situation at that time do you not know that the Louisville & Nashville did everything it could to prevent the Tennesse Central from coming in?

Mr. Keeble: Now, did everything they could—that is That the Louisville & Nashville Railroad a broad term. was fighting it, perhaps, and that I believe the Louisville & Nashville Railroad was, is a fact.

Mr. Henderson: That is all.

Commissioner Meyer: Is that all, Mr. Jouett:

Mr. Jouett: That is all I have.

Mr. De Bow: Mr. Keeble, you say you assume that the Louisville & Nashville Railroad opposed the coming of the Tennessee Central. Was not that upon the ground, and was it not fought out, and known by all the citizens here, that it opposed the city subscribing to the stock, and the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, as one of the largest tax payers, were fighting it because they did not want to be burdened by that extra

amount of taxes to bring a railroad here?

384 Mr. Keeble: Mr. De Bow, that was an argument that was advanced, and no doubt that did have its influence on the railroads, but my own judgment about it was, just as I have stated before, that the Louisville & Nashville Railroad was opposed to it not only for that reason but upon general principles. I might be

mistaken; that was my judgment then. Commissioner Meyer: That seems to be all, Mr.

Keeble.

(Witness excused.)

H. H. Trabue was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Jouett: Will you give your name and initials?

Mr. Trabue: H. H. Trabue.

Mr. Jouett: You live in Nashville?

Mr. Trabue. Yes, sir.

Mr. Jouett. What is your business?

Mr. Trabue: I am assistant chief engineer and assistant real estate agent of the Nashville, Chattanooga & St. Louis Railway.

Mr. Jouett: Have you at our request made blue prints or a map, showing of the city of Nashville at the present time, and showing particularly the various railroad lines in the city?

Mr. Trabue: I have a map here that was not made by me, but was made in Mr. Bruce's office, which takes the city—upon which has been shown—

Mr. Jouett (interrupting): Before you get to that, we will offer that map in evidence, and then you can

discuss it.

(The map, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 1, Witness Trabue, received in evidence March 26, 1914, and is attached hereto.)

Mr. Jouett: Will you please explain to the Commissioner briefly what that map shows with reference to the various railroad lines, stating how they are indicated.

Mr. Trabue: In red, on the map, is shown the tracks of the Nashville, Chattanooga & St. Louis Railway within what is known as the terminal limits of Nashville.

In yellow, on the map, is shown the tracks of the Louisville & Nashville Railroad Company within the

terminal limits of Nashville.

In green, between Spruce street on the south and 386 Gay street on the north, is shown the tracks within the limits of the old Nashville Terminal Company.

In black is shown the tracks of the Tennessee Central

Railroad.

Mr. Jouett: What are the little spurs that run off

from these various tracks?

Mr. Trabue: They are spurs to different industries.
Mr. Jouett: Where is Baxter Heights or Shops
Junction? Is that indicated on this map? Will you take
a red pencil and indicate where that is shown?

Commissioner Meyer: You remember that they did mark Exhibit 1, and the word "Shop" appears here.

Mr. Jouett: That is right; I just want him to describe it; I did not notice the name there. Can you state how many miles of track is owned by each of these three

railroads within the city of Nashville?

Mr. Trabue: I can only give it so far as the Nashville, Chattanooga & St. Louis Railway is concerned, but I have sent down to have it gotten as far as the Louisville & Nashville Railroad is concerned, but I do not know anything about the mileage of the Tennessee Central Railroad.

Mr. Jonett: Will you state what the mileage of

387 the Nashville, Chattanooga & St. Louis is?

Mr. Trabue: The main line mileage from a point at the crossing of the Chattanooga division, as I will indicate on this map with the letter in red, the letter A, and extending through the heart of the city, or the center of the map, to the bank of the Cumberland River in the upper left hand corner of the map. is 10.64 of main line.

Mr. Jouett: How many miles of side tracks does the Nashville, Chattanooga & St. Louis have in that terri-

tory?

Mr. Trabue: 39.02 miles.

Mr. Jouett: Will you secure during the morning and give to the Reporter the mileage of the Louisville & Nashville in the city?

Mr. Trabue: Yes, sir.

(The figures later furnished to the Reporter by the

witness were miles.)

Mr. Jouett: Did you in this calculation include any part of the property shown in green that represents what is known as the old Louisville & Nashville Terminal property?

Mr. Trabue: Yes, sir.

Mr. Henderson: Where is that green?

388 Mr. Jouett: It is a very bad color of green; it is almost yellow, but if you look at it in the light it is green.

Mr. Trabue: The figures heretofore given as .93 of a mile of main line and 14.30 miles of side lines in that district between Spruce street on the south and Gay street on the north, which is on the property owned in fee by the Nashville, Chattanooga & St. Louis Railway.

Mr. Jouett: Do you know whether any of the territory indicated by that green marking is owned by the

Louisville & Nashville Railroad Company?

Mr. Trabue: No. sir.

Mr. Jouett: You mean you do not know, or that it is not so?

Mr. Trabue: I do not know; I do not think that it is true.

Mr. Jouett: How much mileage does the Louisville & Nashville Terminal Company, which, as you will understand, leased for 99 years its property to these two Railroad Companies, own in that green marked section?

Mr. Trabue: There is .17 of a mile on the main line of the Louisville & Nashville Railroad on property owned in fee by the Louisville & Nashville Torminal

in fee by the Louisville & Nashville Terminal 389 Company. That was brought about by the shift-

ing of the main line in the construction of those yards and depots, etc. That is the only main line that I know of on the property of the Louisville & Nashville Terminal Company. There are 7.3 miles of side lines on the property of the Louisville & Nashville Terminal Company.

Mr. Jouett: That is due to the large number of

tracks that are on that space?

Mr. Trabue: Yes, sir.

Mr. Jouett: What is the total length of that section marked in green and representing what was spoken of as

the original Louisville & Nashville Terminal Company

property?

Mr. Trabue: Of the main line of the Nashville, Chattanooga & St. Louis it is .93 of a mile, and then there is a branch line out from that at Cedar street, which takes in the .17 of a mile of the Louisville & Nashville Railroad, which I have heretofore stated is on the property of the Louisville & Nashville Terminal Company. That makes a total of 1.1 miles of main line, but in

reality the total length or the extent of the Louis-390 ville & Nashville Terminal Company is about one

mile.

Mr. Jouett: You mean, property upon which its main track, or that space is marked green, regardless of who owns it?

Mr. Trabue: That part that is marked green. Mr. Jouett: Regardless of who owns it?

Mr. Trabue: Yes, in other words, the space from

Spruce to Gay street is about one mile.

Mr. Jouett: There is no connection with that except the Louisville & Nashville and Nashville, Chattanooga & St. Louis going out from either end, is there?

Mr. Trabue: No, sir. Mr. Jouett: What improvements speaking gener-

ally, are located in that space?

Mr. Trabue: The passenger station, the Union passenger station, the coal chutes and roundhouse, the freight depot of the Nashville, Chattanooga & St. Louis Railway, and the freight depot of the Louisville & Nashville Railroad.

Mr. Jouett: Mr. Trabue, have you caused to be made in your office a copy of an old map of Nashville, traced from Hopkins' Atlas of 1889?

Mr. Trabue: Yes, sir.

391 Mr. Jouett: I offer one of these maps in evi-

dence, marked Trabue Exhibit Number 2.

(The map so offered and referred to, was received in evidence and thereupon marked Defendants' Exhibit 2, Witness Trabue, received in evidence March 26, 1914, and is attached hereto.)

Mr. Jouett: Will you state generally and briefly to

the Commissioner what that map shows?

Mr. Trabue: This map shows the location of the different roads in Nashville prior to the building of the new terminal facilities of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, with the exception of the location of the passenger station and freight station of the Louisville & Nash-

ville Railroad upon College and Market streets. I will mark the location of the passenger station with the letter A.

Commissioner Meyer: In red?

Mr. Trabue: In red. And the location of the freight station with the letter B in red.

Mr. Jouett: Do I understand that they were not on the original map and you have put them on this map?

Mr. Trabue: Yes, sir.

Mr. Jouett: Will you, during the morning, mark the copy that was filed with the Reporter in the same colors as those shown upon the map Number 1, filed by you? Mr. Trabue: Yes, sir.

Mr. Jouett: Nominating red for the Nashville, Chattanooga & St. Louis, yellow for the Louisville & Nashville and black for the Tennessee Central?

Mr. Trabue: Yes, sir; the Tennessee Central is not

shown on this.

Mr. Jouett: Strike out that last part. This map was made before the Tennessee Central was built into Nashville, I understand.

Mr. Trabue: Yes, sir.

Mr. Jouett: I call your attention to the printed map marked as Exhibit Number 1, and will ask you to state whether or not that correctly shows what it purports to show, namely; the property in what was known as the terminal section owned by the various railroads?

Mr. Trabue: Yes, sir; except as heretofore stated, I am not in position to state that the property shown in blue was actually owned by the Louisville & Nashville Railroad. I know that they controlled it and that they

leased it to the Louisville & Nashville Terminal 393 Company, but as to whether or not the fee was in the Louisville & Nashville Railroad I am not in

position to state; I do not deny it, but I cannot state it.

Mr. Jouett: You are not the real estate agent of the Louisville & Nashville?

Mr. Trabue: No, sir.

Mr. Jouett: Those are the few small sections shown in blue here?

Mr. Trabue: Yes, sir; between Cedar and Gay streets.

Mr. Jouett: The key to the map giving the colors as shown at the top is correct, is it?

Mr. Trabue: Yes, sir. Mr. Jouett: That is all.

Commissioner Meyer: Is that all with this witness?

Mr. Jouett: Yes, sir; I believe that is all.

Commissioner Meyer: Have you any questions to ask this witness, Mr. Henderson?

Mr. Henderson: Yes, sir.

CROSS-EXAMINITION.

Mr. Henderson: Mr. Trabue, that situation as shown by your Exhibit 2, does that show the situation, the rail-

road situation, as of 1899? You stated it was

394 traced from Hopkins' map of 1889.

Mr. Trabue: To the best of my knowledge and belief, that is correct.

Mr. Henderson: That is the condition in 1889?

Mr. Trabue: Yes, sir.

Mr. Henderson: Now, you are familiar with the locations, I assume, that you have shown on Exhibit Number 1, Baxter Heights and Shops Junction?

Mr. Trabue: I am familiar with the location; I never heard it called Baxter Heights until last night.

Mr. Henderson: Is there a freight and passenger station at the point of interchange between the Nashville, Chattanooga & St. Louis and the Tennessee Central?

Mr. Trabue: There is no station at the point where the physical connection is made, but a short distance, on the top of the hill, at the Charlotte Pike, is what is known as Van Blarcom, there is a passenger station on the Tennessee Central Railroad. You see, the crossing of the Tennessee Central with the Nashville, Chattanooga & St. Louis Railway is about 30 feet overhead, and this physi-

cal connection is made by starting at a point on the Nashville, Chattanooga & St. Louis Railway

south of this overhead crossing and ascending to a point between this crossing and Charlotte Pike on the Tennessee Central, and the passenger station is located at the intersection of Charlotte Pike and the Tennessee Central Railroad, and I understand is called Van Blarcom station.

Mr. Henderson: That is a passenger station on the

Tennessee Central?

Mr. Trabue: Yes, sir; there near the physical con-

nection between the two roads.

Mr. Henderson: Is it not a fact that it is a half a mile or more from the point of physical connection?

Mr. Trabue: I think not.

Mr. Henderson: You don't know the exact distance?

Mr. Trabue: No. sir.

Mr. Henderson: Has the Nashville. Chattanooga &

St. Louis Railway a freight or passenger station at that point of connection with the Tennessee Central Railroad?

Mr. Trabue: No, sir.

Mr. Henderson: You have no facilities for receiving or delivering freight at Shops Junction or Baxter Heights?

Mr. Trabue: We have that physical connection.

Mr. Henderson: Except for carload freight exchanged with the Tennessee Central Railway.

Mr. Trabue: Not that I know of.

Mr. Henderson: Is it possible to reach that point by wagon or dray?

Mr. Trabue: To my knowledge, there is no road through there. I won't state it positively, but I have no

knowledge of any wagon road through there.

Mr. Henderson: Then, it would be a practical impossibility or an absolute impossibility, to call Shops Junction or Baxter Heights a receiving or delivering point for freight, as you speak of the ordinary freight station, taking in carload or less than carload freight by wagon or dray as it comes to the railroad generally?

Mr. Trabue: I do not know of any facilities there

except the physical connection.

Mr. Henderson: I understand that all of the tracks of all the terminals shown on this map in red and yellow and in green, that the Louisville & Nashville and Nashville, Chattanooga & St. Louis have absolute equal rights on every track, is that correct?

Mr. Trabue: Now, I am not in position to go into that, because that does not come under my juris-

diction. I do not know just exactly what the operating arrangement is.

Mr. Henderson: Mr. Commissioner, I would like to know if there will be anybody on here—

Mr. Jouett (interrupting): We concede that; we not only concede that, but claim that.

Mr. Henderson: Will there be anybody on the stand to testify to that.

Mr. Jouett: Mr. Bruce; we expect to prove it by Mr. Bruce.

Mr. Henderson: You are not in position, then, to answer?

Mr. Trabue: No. sir.

Mr. Henderson: That is all. (Witness excused.)

W. P. Bruce was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Jouett: Please state your name, residence and occupation.

Mr. Bruce: W. P. Bruce, Nashville, Tennessee,

Superintendent of Nashville Terminals.

Mr. Jouett: How long have you occupied the position of Superintendent of Nashville Terminals?

Mr. Bruce: Twelve years.

Mr. Jouett: Please state what your experience in

railroad work has been?

Mr. Bruce: I have been in the railroad service for 37 years, in the capacity of operator, local agent, clerk in large agencies, train dispatcher, assistant yard master, train master and superintendent.

Mr. Jouett: Please state what proportion, if any, of the time you mentioned has been spent in railroad service in or around the city of Nashville and in the employment of either the Louisville & Nashville or Nashville, Chattanooga & St. Louis roads?

Mr. Bruce: Very nearly 21 years.

Mr. Jouett: Please state whether or not from 399 your experience and service in the capacities you have described you are fully acquainted with the terminal situation of the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads at and in the vicinity of Nashville?

Mr. Bruce: I am.

Mr. Jouett: Please also state whether or not in your employment and experience in the capacities stated you are fully acquainted with the terminal situation of the Tennessee Central Railroad in its relation to the Louisville & Nashville and Nashville, Chattanooga & St. Louis Railroads at and in the vicinity of Nashville.

Mr. Bruce: I am.

Mr. Jouett: Please state what are the existing rates, rules and regulations of the Louisville & Nashville Railroad Company and Nashville, Chattanooga & St. Louis governing their terminal arrangements at Nashville. Tennessee.

Mr. Bruce: The Louisville & Nashville Railroad Company's rates, rules and regulations governing its terminal arrangements at Nashville, Tennessee, are contained in its Terminal Tariff G. F. O. 1930, "ICC A-12658, particularly 1st revised page 261, effective August 3, 1913; 1st revised page 262, effective February

15, 1914; 2nd revised page 263, effective March 10, 1914; 2nd revised page 264, effective March 10, 400 1914; 1st revised page 265, effective March 14, 1913; 2nd revised page 266, effective March 10, 1914; 2nd revised page 267, effective July 7, 1913; 1st revised page 268, effective March 14, 1913; 1st revised page 269, effective March 14, 1913; 1st revised page 270, effective April 23, 1913; page 271 (original) effective December 3, 1912; and 1st revised page 272, effective March 1, 1913.

The Nashville, Chattanooga & St. Louis Railway's rates, rules and regulations are contained in its Tariff ICC No. 1958-A, particularly 10th revised page 44, effective March 25, 1914; 3rd revised page 45, effective October 28, 1913; 3rd revised, page 46, effective October 28, 1913; 4th revised, page 47, effective October 28, 1913; 4th revised, page 48, effective February 25, 1914; 4th revised, page 49, effective October 28, 1913, and 3rd revised, page 50, effective October 28, 1913.

Mr. Jouett: Rule No. 1 of the tariff mentioned states that "the Nashville Terminals, composed of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway handles freight within the terminal limits of Nashville for the Louisville & Nash-

ville Railroad and the Nashville, Chattanooga & St. Louis Railway." Please explain what are the Nashville Terminals as referred to in that rule?

Mr. Bruce: The Nashville Terminals is an organization for the operation and maintenance of all of the facilities of both roads, including the property leased from the Louisville & Nashville Terminal Company within the city of Nashville, or rather within the prescribed terminal limits, which limits are fixed for the Louisville & Nashville on the north at a point near Carter's shoe factory and on the south at Race Track Siding; and on the Nashville, Chattanooga & St. Louis main line on the west at the Nashville, Chattanooga & St. Louis shops on South Cherry Street, including the West Nashville Branch.

Mr. Jouett: Are the terminal limits which you have described correctly shown on the map which Mr. Trabue has already filed as his Exhibit No. 1?

Mr. Bruce: Yes, sir.

Mr. Jouett: If the organization which you have described is covered or provided for in any written contract or agreement, please file a copy of same, marked Bruce Exhibit No. 1.

Mr. Bruce: It is covered by contract dated August 5, 1900, and I file as Bruce's Exhibit No. 1 a copy thereof, certified to be correct by Mr. N. K. Gilbert, Assistant Secretary of the Louisville & Nashville Railroad.

(The document was received in evidence and thereupon marked Defendant's Exhibit No. 1, Witness Bruce, received in evidence March 25, 1914, and is attached hereto.)

BRUCE'S EXHIBIT NO. 1.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

City of Nashville and Traffic Bureau of Nashville, Petitioners, vs. I. C. C. Docket No. 6484.

Louisville & Nashville Railroad Company. Nashville, Chattanooga & St. Louis Railway.

Nashville Terminal Company, and

Tennessee Central Railroad Company, H. B. Chamberlain and W. K. McAlister, Receivers thereof.

Cross-Interrogatories to be asked W. P. Bruce, after the same have been crossed by attorneys for defendants, on his Exhibit No. 8, as agreed upon at the hearing of the complaint of the City of Nashville and Traffic Bureau of Nashville held at Nashville, Tennessee, on March 25 and 26, 1914. After the same have been re-crossed by attorneys for defendants, the same are to be sent to some disinterested Notary Public, and by him put to the witness, and his answers taken in shorthand and transcribed by said Notary.

The said interrogatories were put to the witness W. P. Bruce, after he had been duly sworn to tell the truth, the whole truth and nothing but the truth, by John J. Norton, a disinterested Notary Public and Stenographer, and his answers written by said Notary, as follows:

Int. 1. Was your Exhibit No. 8 compiled in accordance with the accounting classification of operating ex-

penses prescribed by the Interstate Commerce Commis-

sion for steam roads?

Ans. Yes.

2. Does the Louisville & Nashville Terminal Company file annual reports of expenses or any reports of any nature whatsoever with the Interstate Commerce Commission, if so, describe them and show when filed?

Ans. No.

3. Please state which of the items shown on pages 1 and 2 of this Exhibit are divided between passenger traffic and freight traffic on basis of actual cost of each?

Ans. Under head of maintenance of Equipment, none of the individual items were wholly divided between

passenger and freight on actual cost of each, but a large proportion of the following items was so divided:

Ties.

Other Track Material.

Stations, Offices and other Buildings.

The actual expenses of maintaining tracks and buildings in the passenger yard were charged to passenger, and similar expenses in the freight yard were charged to freight. There were some expenses for maintenance of tracks and buildings used in both classes of service, and these were divided between the two classes on basis of the number of hours yard erews were engaged in each class of service. In order to save time, I will hereinafter refer to this as the "hours of service" basis. This distribution was made at the close of each month, based on the number of hours reported for that month, and the figures in Exhibit No. 8 are the totals for the six months.

Under the head of Maintenance of Equipment, the only expenses divided on actual cost of each were cost of

maintaining freight and passenger cars.

Under Transportation Expenses, the following expenses were directly divided on basis of actual cost of each:

Station Employes, Freight.

Station Employes, Passenger.

Weighing and Car Service Associations. This item however, includes Car Service Association only. Station Supplies & Expenses. Freight and Passen-

Train Supplies and Expenses.

Loss & Damage, Freight and Baggage.

Clearing Wrecks.

Damage to Property.

Damage to Live Stock on Right of Way.

Injuries to Persons. Injuries to Employes.

Under General Expenses, none of the expenses were directly divided between passenger and freight.

4. How was the actual cost ascertained in each

instance?

Ans. The total charges in Exhibit No. 8 to Cross Ties were \$18,530.08; \$15,249.68 of this was for ties used in the freight yard. The balance was divided between freight and passenger on the hours of service basis. There was used in the passenger yard \$1,024.00 worth

of ties which we omitted from the statement, as having no bearing on the matter. In other words, the amount shown for passenger should be increased by \$1,024.00.

The total charge to rails in the statement was \$3,421.05; of this, \$44.53 was for rails used in the passenger yard, and \$1,028.30 for rails used in the freight yard. The remainder \$2,348.22 for rails used in main tracks, etc., was divided between freight and passenger each month, as used, on the hours of service basis.

The total cost of "Other track Material" which includes switches, splices, tie-plates, spikes, bolts, bumpers, etc., was \$14,153.88. Of this, \$2,900.00 was used in the freight yard, and \$925.17 in the passenger yard. The remainder was used in tracks in joint service, and was

divided on the hours of service basis.

The total charge to Stations, Offices and other Buildings, passenger was \$10,768.71. \$10,586.16 of this was for repairs to Union Station, Baggage Building and other passenger buildings. The amount charged to freight through the city traffic was \$3.334.95. there was \$2,109.89, repairs to freight buildings, not including the Nashville Freight Depots. There was incurred in repairing buildings used for both classes of service, and other items not directly chargeable to any particular building \$1,308.51, which was divided between passenger and freight on the hours of service basis each month, and the amounts so ascertained added to the amounts directly allocated. There was also an item of \$24.40 for maintaining buildings used for city freight traffic, such as yard offices, etc., in West, East and South Nashville and the Clay Street District where no through traffic is handled, and in preparing this Exhibit, this amount was therefore allocated to city traffic.

Under Maintenance of Equipment the amount shown for Passenger Car Repairs covers the cost of inspecting and repairing passenger cars; the amount shown for Freight Car Repairs covers the cost of repairing and inspecting freight cars, but in either case, no repairs are included except those made necessary by accident or improper handling for which Terminal employes are responsible. Separate forces are maintained to look after

freight and passenger cars.

The item of \$17,342.01 charged to through traffic covers wages and supplies of Car Inspectors looking after both through and city cars, but no portion of this expense was charged in this statement to City Traffic, although 46.925% of it could properly be so charged, amounting to over \$8,000.00.

The \$14,618.39, represents the cost of repairs to cars

damaged by yard engines.

Under Transportation Expenses-Station Employes, the amount shown in passenger column, \$12,387.47 covers wages of employes in and about the passenger station and baggage building whose work had to do exclusively

with passenger service.

The amount shown for "City Freight Traffic" under this same heading, \$7,592.28, represents the wages of Station Agents and Clerks at West, South and East Nashville, where no through traffic is handled, and where the amount of Less Carload Traffic handled is negligible. A small portion of this item could properly be deducted on account of handling less carload traffic; but we have already omitted the wages of the porters and laborers at these stations, and have not included any portion of the \$100,106.75 expenses for Agents, Clerks and labor at the two Nashville freight stations, although the greater part by far of the City Carload Traffic is delivered and forwarded through the medium of these agencies.

Weighing and Car Service Associations. This is the name of the account, but the amount shown does not include anything for weighing bureau service. The total expenses of the Car Service Bureau, which were vouchered for by me. for the six months, were \$3,914.37. This Bureau handled during that period 214,500 cars, 57.798, or 26.57% of which were Nashville cars handled by these railroads. We therefore charged 26.57% of the

total expenses, or \$1,040.18 to City Traffic.

Station Supplies and Expenses. The charged to passenger represents the cost of supplies and expenses in and around the passenger station, such as electric light, water, ice, janitor's supplies, etc. It would be impracticable to enumerate all of the items, but those I have just named make up two-thirds of the total. The portion charged to City Traffic covers similar expenses, at East, West and South Nashville Agencies, where no through traffic, and only a very small amount of Less Carload Traffic is handled, as explained, in connection with Station Employes.

Yardmasters and their Clerks. This represents the wages of Yardmasters and their Clerks and assistants, but not yard switching crews. Separate forces look after the passenger traffic. The Yardmasters and their Clerks

look after freight traffic exclusively.

The amounts charged to Clearing Wrecks, Loss and Damage Freight, Loss and Damage Baggage, Damage to Property, Damage to Live Stock on Right of Way.

Injuries to Persons and Injuries to Employes, were ascertained from records of vouchers made, or distribution of pay rolls in the same manner that the other items were ascertained, the proper accounts being charged with each item of expense at the time it was incurred, in accordance with the regulations of the Interstate Commerce Commission. The amounts shown do not include any payments resulting from the operation of road trains, except where they are shown in the column headed Through Traffic.

On which of these items were the expenses

allocated or adjusted?

Ans. I do not understand exactly what is meant by this question. My answer to No. 3 shows the items on which the expenses were directly allocated to freight and passenger traffic. The remaining items were pro-rated between the freight and passenger on basis of number of hours yard crews were engaged in each class of serv-This apportionment was made at the close of each month on the hours of service for that month, and the amounts shown in Exhibit No. 8 are the totals for the six months, just as the accounts stand on the books and records in my office.

6. How was the allocation or adjustment arrived at

on each item?

Ans. My answer to No. 4 shows how the allocated amounts were arrived at. If the word "adjusted" as used in this question means apportioned, each of the accounts not covered by my answer No. 3 was apportioned between passenger and freight at the close of each month, on basis of hours of service for that month, and the totals included in Exhibit No. 8 are the totals of these accounts after the apportionment was made, just as these items now appear in our records.

Please state separately all of the items of cost taken into consideration by you, which you allocated to passenger traffic and to through and city freight traffic, giving the particular items of cost allocated to through

and city freight and to passenger respectively?

Ans. My answers to Nos. 3 and 4 show the items allocated to passenger traffic, and to freight traffic, and some of the items allocated to through and city freight traffic. Those not specifically mentioned in the answers referred to, were:

Injuries to Persons, \$108.49. This is under Maintenance of Way and Structures, and covers amounts paid in settlement of injuries to section laborers working on tracks used exclusively for handling City Traffic, in other

words, city freight tracks outside of the main tracks and

passenger tracks.

Dispatching Trains \$3,383.90. This is wages of telegraph operators and others engaged in giving orders for the movement of trains and yard engines over main tracks, between the trainyard and the limits of the Terminals. A portion of this would properly be chargeable to handling City traffic. but we have included all of it under the head of through traffic.

The item of \$7,592.28, Station Employes, City Freight Traffic, I have already explained. The item of \$2,454.49 opposite this, was for labor transferring contents of damaged cars. This was all chargeable to through

traffic.

Yardmasters and their clerks, as explained, covers the wages of those employes, all of whom are engaged in handling freight traffic. The \$5,225.00 allocated to City Traffic covers the wages of Yardmasters and their clerks in the East, South and West Nashville and Clay Street Districts, who perform no service in connection with through traffic. The remainder \$32,096.15, covers wages of such employes in main train yards.

Train Supplies and Expenses, which I omitted to explain in my answer No. 3, is divided on actual cost of each class of service. The passenger item of \$2,100.85 is made up of \$1,472.00 wages of passenger car oilers, \$588.80 wages of passenger train supply clerks, and the balance, the proportion of the cost of supervision of the

Car Inspectors and Oilers.

The freight item of \$6,188.00, charged to through traffic is made up of the wages of car oilers \$5,888.00, and \$300.00 wages of supply clerks. The \$462.43 charged to through and city freight traffic is made up of \$372.75 wages of car clerks keeping records of cars damaged in switching, \$50.19 labor gathering up and repairing grain doors, and some miscellaneous small items of that sort.

The only part of the account "Stationery and Printing" which was allocated was the item of \$164.64 charged to through freight traffic. This covers the cost of stationery for making special reports of through cars to the different roads. All other stationery is lumped, and divided between passenger and freight on hours of service basis.

Operating Joint Tracks and Facilities. The debit item of \$28.64 covers the amount paid the Tennessee Central for use of joint tracks, and the credit item, amounts collected from that line for use of joint track.

Addendum: There is an item of \$7.10 shown under

Maintenance of Joint Tracks and Facilities on page 1, which should not appear in that account. This was for maintaining a passenger platform at Wedgewood Avenue, and should be included in Maintaining Stations, Offices and other Buildings.

No. 8. Is every item of cost capable of being allocated to either passenger or freight, through or city?

Ans. No.

9. How was the actual cost ascertained in each instance on each item allocated to passenger traffic, and on

through freight traffic and on city freight traffic?

Ans. I have already explained how the allocations and apportionments were made. To make a detailed explanation of every item of expense and show how it was apportioned or allocated would entail a great deal of expense. The distribution of the labor expense is made from records kept by foremen and clerks, showing the amount of time put in by the various employes in the different classes of service, and the amount of their pay is distributed, as are all other expenses, in accordance with the requirements of the Interstate Commerce Commission.

Similarly, all material, whether bought outright, or furnished by either of the railroads, is paid for by vouchers, so as to get all of the expenses into one account, and the amounts of the vouchers distributed according to the use made of the material, and in the manner pre-

scribed by the Commission.

10. On the type-written sheet showing "Percentage for Distribution of Expenses between City and Through Freight Traffic," you show through ears, loaded handled inbound, 103,307 and through ears, loaded, outbound, 103,337. Where do you get the 30 additional cars you handle outbound over and above the number handled inbound?

Ans. In counting the cars, we began with the cars arriving after midnight of July 31 and this did not include cars that arrived for some hours previous to that time and were not forwarded until after that time, however, this discrepancy is not great enough to affect in any way the calculation of the cost for switching either through or city cars.

11. Is it not a fact that city business and through business, both, are handled to and from Nashville in the

same train?

Ans. Yes.

12. In breaking up a train, is it not necessary to make from one to five or six, and sometimes more, switch

movements before the train is broken up and the through cars in the train placed on their proper tracks, respectively?

Ans. Yes, but a great many of the through cars do not have to be moved at all from the track on which they arrive.

13. Is it not necessary to make as many switches on through business in making up a train as it is in breaking

up a train?

Ans. No. Many of the through cars leave from the same track on which they arrive, and are not handled at all by the break-up, or make-up engines, and were it not for the necessity of switching out the city cars from between the through cars, there would be even more through cars that would not have to be handled at all by the break-up and make up engines. The through cars that are handled by the break-up engines are placed with one movement on the track from which they depart and the cars originating in the city are switched on to the tracks on which through cars have been assembled until there is sufficient tonnage to make a train.

Please explain how it is possible to handle city and through business in the same train, both in- and outbound, and make only one switch of the through cars,

that switch being made on arrival only?

Ans. My answer to your last question explains that.

How is it possible to make up a train which will include Nashville proper business and through business as well without switching the through cars in making up said train?

Ans. Answer to question 13 explains that.

If it is necessary to switch through cars on arrival only, why do you show in the "distribution of time of all yard crews handling freight traffic," on the typewritten sheet, "Crews breaking up and making up freight trains"?

Ans. Simply because the same crews that break up trains make up trains also, performing both operations

in the same movement.

17. Of the total city cars, loaded, handled inbound and the total city cars, loaded, handled outbound, how many of each were package cars containing less than carload shipments of merchandise, loaded or unloaded at the freight depot of the L. & N. R. R. Co.?

26.954 cars.

18. How many of each were package cars containing less carload shipments of merchandise, unloaded or loaded at the freight station of the N. C. & St. L. Ry.?

Ans. 18,340 cars.

19. How many of each were package cars containing less carload shipments of merchandise, unloaded or loaded, at the freight station at Cummins Station?

Ans. 3,719 cars.

20. How much time was consumed by the yard crews handling these less carload shipments of merchandise freight to and from the warehouses of the L. & N. R. R.,

N. C. & St. L. Ry., and Cummins' Station?

Ans. We can not make any distinction between loads containing less than carload shipments and loads containing full carloads and can not tell how much of the time of the yard crews was engaged in handling less carload shipments of merchandise freight.

21. What was the total expense of handling the cars to and from the freight warehouses of the L. & N. R. R.,

N. C. & St. L. Ry. and Cummins' Station?

Ans. We cannot separate this expense from the expense of handling other city cars. Our method of keeping records would not enable us to make this separation, and it could not be made without considerable labor and expense.

22. Do you have separate crews and are separate engines assigned for the handling of passenger traffic, ex-

clusively?

Ans. We have separate crews and engines assigned exclusively for handling passenger traffic, but it is necessary to have crews and engines not assigned exclusively to that service to assist temporarily in that work from time to time.

23. Were the same crews and engines, assigned to passenger service, used exclusively in the passenger service continuously for the 6 months ending January 31,

1914?

Ans. Crews and engines were assigned daily exclusively to the handling of passenger traffic but the same

engines and same men were not used every day.

24. If not, did you keep a separate account of fuel, water, lubricants and other supplies for such engines during the period they were engaged exclusively in the handling of passenger business within the terminal limits?

Ans. No. The fuel, water, luricants and other supplies for all yard engines were prorated according to the number of hours the yard crews were engaged in each class of service.

25. Did you also keep a separate account of the repairs, renewals and depreciation of these engines during

the time they were engaged exclusively in the handling

of passenger business?

No. The repairs and depreciation were pro-Ans. rated in the same manner just explained, but there was nothing charged to renewals.

26. Did you keep a separate account of the time of the crews while engaged exclusively in the passenger

service?

Ans. Yes.

27. Do you have separate crews and are engines assigned for the handling of carload city freight business exclusively?

We have separate crews and engines assigned Ans. for the handling of city freight exclusively, whether car-

load or package cars.

Were the same cars and engines assigned to city freight service used exclusively in such service continuously for the six months ending January 31, 1914?

A certain number of crews and engines were assigned for city freight service exclusively, but the same men and the same engines were not used every day.

If not, did you keep a separate account of fuel, water, lubricants, and other supplies for such engines during the period they were engaged exclusively in the handling of the city freight business within the terminal limits?

Ans. No. These expenses were pro-rated as previous-

ly explained.

Did you also keep a separate account of the repairs, renewals and depreciations of these engines during the time they were engaged exclusively in the handling of the city freight business?

Ans. My last answer covers that. No renewals were

charged.

31. Do you keep a switch list, showing the number of switches made on each car, whether a city or through car?

Ans. No. We do not keep a switch list showing the number of switches made on each car, but we keep records showing the movements made by each car from one location to another, or from one yard to another. We keep no record of the number of swithes made on each car handled by the break-up and make-up engines in the train yards or by the engines classifying city business in the different assembling yards.

32. Please give the cost of fuel per yard locomotives

at Nashville, New Orleans and Memphis?

Ans. The total cost of fuel, shown on my Exhibit No. 8, is \$49,188.62. This includes the invoice cost of the coal, the freight charges and cost of labor of putting the coal on the engines. During the period covered by this Exhibit, we worked 8,385 engine days. Dividing this into the total cost of fuel shown on the Exhibit, gives \$5.86, which is the cost per yard engine per working day of 12 hours at Nashville. I know nothing of the cost at New Orleans and Memphis.

33. Is it not a fact that the volume of business to and from Nashville is, generally speaking, uniform; that is, you do not have rush seasons, when the volume of business is especially heavy, and then light seasons with

a small volume of business?

Ans. No. The volume of both through and city business fluctuates. In my opinion, however, the six months period that I used fairly represents the average cost of handling the city business.

34. How many cars were weighed at Nashville dur-

ing the period covered by your Exhibit No. 8?

Ans. 9,449 Nashville cars 1,057 through cars

10,506 Total.

35. What per cent of the through cars handled inbound and outbound shown on Exhibit No. 8 were weighed at Nashville?

A. 1.2%.

36. How many switching movements were necessary to take each through car out of the train, weigh it and put it back into the train to be forwarded?

Ans. An average of two movements per car weighed

covers the entire operation.

37. How many cars were bad ordered and sent to the shops for repairs during the period covered by your Exhibit No. 8?

Ans. 1,975 City loads 7,105 through loads

9,080 Total.

38. What per cent of the through cars handled inbound and outbound shown on your Exhibit 8 were bad ordered and shopped at Nashville?

Ans. 6.87% through loads shopped.

39. How many switch movements are necessary to take a through car out of a train, carry it to the shops, repair it and put it back into the train?

Ans. An average of two movements.

40. Please give a list of the employes in your office,

showing the duties of each?

Ans. E. G. Payne, Chief Clerk; A. T. Hamilton, Assistant Chief Clerk; F. H. Crotzer, Time-keeper; W. H. Gwinn, Car Distributor; T. J. Johnson, Clerk; Miss M. L. Edge, Stenographer, Geo. Goodfrey, Messenger; J. B. Armstrong, Law Agent.

41. Please furnish a list of all employes of the socalled Nashville Terminals, showing whether each employee is a joint or individual employee of the L. & N. R. R., or the N. C. & St. L. R'y, giving the duties of each?

In answer to question No. 80, I will file copies of the payrolls for the month of January, 1914, which will show all employes of the Nashville Terminals and the duties of each employe. The employes shown on these rolls are not the direct employes of either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway. Each of these roads has a number of direct employes in their service at Nashville and these employes are under my jurisdiction, but they are not employes of the Nashville Terminals and their salaries do not enter into the accounts of the Nashville Terminals. except where they perform some service for the Nashville Terminals, in which case the amount chargeable to the Nashville Terminals is billed against the Terminals by the road whose employes perform the service. The necessity for each road having direct employes of its own arises from the fact that each road operates its own freight depot and certain other facilities in the limits of the Nashville Terminals, but not operated for joint use except in special instances, and the arrangement under which I have jurisdiction over these direct employes is one of convenience and economy, the effect of which arrangement makes me not only Superintendent of the Nashville Terminals, but the individual Superintendent of each of the two roads.

42. Were all the figures shown on your exhibit No. 8

made in your office, and under your direction?

Ans. Yes.

43. Were any of these figures made by you personally?

Ans. No, but the work was done under my supervision.

44. Do you know, personally, whether the statement is accurate, or that the methods used in dividing the ex-

pense between passenger and freight, and between through and city freight are correct and accurate?

Ans. I know that the methods used for dividing the expense between through and city freight are correct, but I did not personally make any of the figures. This work was done under the supervision of J. L. Hopkins, who has had 17 years experience in railroad office and accounting work for the L. & N. R. R., N. C. & St. L. Rv. and Nashville Terminals, 8 years of which was in my office, and to the best of my knowledge, information and belief the figures are correct.

45. Of the locomotives operated in the so-called Nashville Terminals, how many are owned by the L. & N. R. R., and how many are owned by the N. C. & St. L. R'y?

Ans. There were 16 to 17 engines owned by the N.

C. & St. L. R'y and 21 to 22 by the L. & N. R. R.

46. On page 2 of your Exhibit you show "Weighing and Car Service Association, \$1,040.18" charged to city traffic only. Is it not a fact that through cars are weighed at Nashville and that through package freight is inspected at Nashville by the Southern Weighing & Inspection Bureau?

This item includes only that part of the ex-Ans. pense of the Demurrage Bureau chargeable to the handling of city traffic and does not include any part of the expense of the Southern Weighing & Inspection Bureau, although the expense of that Bureau for the weighing and inspection of city business during this period amounted to \$771.00. It is a fact that through cars are weighed at Nashville and that through package freight is inspected at Nashville by the Southern Weighing & Inspection Bureau, but the expenses of the Bureau were not included in Exhibit No. 8.

47. If, so, why is it proper to charge this entire

amount to city traffic?

Ans. It is proper to charge this entire amount to the city traffic because this item includes only that part of the expense of the Car Service Bureau chargeable to city traffic.

On page 2 of this Exhibit you add "5% of trans-48. portation expenses not allocated." Please state in detail what general expenses are not covered by this statement?

Ans. The general expenses not covered are: Salaries and expenses of general officers; salaries and expenses of cferks and attendants; general office supplies and expenses; law expenses; insurance; pensions; stationery and printing (for general officers); other expenses as pre-

scribed by the classification of operating expenses promulgated by the Interstate Commerce Commission.

49. File a statement showing the date of purchase of each of the engines furnished the Terminal Company by the N. C. & St. L. Ry. and the L. & N. R. R. Co., and the original cost of each said engine?

Ans. I file statement marked "Complainants' Cross-

Exhibit No. 1," showing this information.

50. Let said statement show also the date at which each of the engines respectively were turned over by each of the roads above mentioned to the Terminal Company?

I have shown this information on Complain-

ants' Cross-Exhibit No. 1.

File a statement showing by years, from the date of purchase to January 1, 1914, the amount charged off as depreciation of each of said engines?

Ans. I have shown this information on Complain-

ants' Cross-Exhibit No. 1.

What is the tractive power of the engines used in the freight business on the road by the L. & N. R. R. Co.,

and the N. C. & St. L. R'y?

The tractive power of engines used in freight Ans. business by the L. & N. R. R. ranges from 23,000 pounds to 47,000 pounds; on the N., C. & St. L. Ry. from 17,820 pounds to 44,081 pounds.

53. What is the tractive power of the engines used in switching or yard service by the so-called Nashville

Terminals at Nashville?

Ans. I have shown this on Complainants' Cross-Ex-

hibit No. 1.

Give the weights of the engines used by your company in making the switching movements referred to in your Exhibit No. 8?

Ans. I have shown this on Complainants' Cross Ex-

hibit No. 1.

What is the average weight of rails used in the terminal vards?

Ans. 69.4 pounds.

What is the average life of these rails in the

terminal vards?

Ans. Average life in main tracks. 10 years. Average life in West Nashville Branch and side tracks, 22 years. Average life, all rail, 19.9 years.

Is it not a fact that a majority of the rails used in the terminal yards are old rails that came off the main and branch lines, which were replaced by heavier rails on the main line and branch lines?

Ans. We use new rails in the main tracks and the

through tracks in the passenger station and use old rails in the side tracks. It is a fact that a majority of the rail is old rail.

58. In charging the costs of the rails used in the terminal yards under the heading of "Maintenance of Way and Structures," did you charge the rails to any one year, or have you distributed the cost over a period of years, and if so, over what period, and on what basis was same distributed?

Ans. We did not charge the cost of the rails used in any one year, nor did we distribute the cost over a period of years. The cost of the rail was taken into account when put into the track and credit allowed for the value of the rail released. We renew a certain amount of rail

each vear.

59. Please give the same information in regard to "Roadway and Track," "Other track Material," "Bridges, Trestles and Culverts," "Over and Under-Grade Crossings," "Grade Crossings, Cattle Guards, etc.," "Right of Way fences," Signal and Interlocking Plants," "Water Stations," "Fuel Stations," "Shop Engine Houses," "Station Offices and other Buildings," "Road-way Tools and Supplies."

Ans. These expenses were charged in the month in

which the work was done.

60. Please give the same information in regard to items under the heading of "Maintenance of Equipment," "Steam Locomotive Repairs," "Steam Locomotive Depreciation," "Freight Train Car Repairs."

The items of expense under Maintenance of Equipment were the actual charges made under these headings during the six months covered by the Exhibit. The total charges to Steam Locomotive Repairs for the 6 months covered by the Exhibit was \$23,392.24. For the previous six months the same expense amounted to \$38,574,28. If we had divided the actual expense for the 12 months by two, this expense for the period of this Exhibit would have been \$7.691.02 more than is shown.

61. Is it not a fact that most of the engines now used by the Terminal Company's service, furnished by the L. & N. R. R. Co. and the N. C. & St. L. Ry., were old freight engines that were unfit for further use as road

engines?

Ans. No it is not. The engines now used in the terminals are in first class condition and capable of giving good service for a good many years. Nine of them were originally built for switching service; the rest were

formerly used in road service, being replaced by heavier

road engines and converted into switch engines.

62. Is it not a fact that with up-to-date terminal engines with greater tractive power than the present engines used by you, you would be enabled to handle in both your long and short movements many more cars and

thus reduce the cost per car of handling cars?

The tractive power of the yard engines in use is sufficient for the length of tracks and the number of cars that can be accumulated for handling in any one We have sufficient heavy power where movement. heavy power is needed and the light power is used where it will answer the purpose as well as heavy power. If we should hold city or through cars in train yards or classification tracks long enough to accumulate a greater number of cars for any one destination than can be handled by the engines in use, the congestion in the vard would be increased and the business would be seriously delayed. In order to give good service in the handling of city business, it is necessary to make frequent movements with a few cars between the train yard and outlying districts. In my judgment the use of a heavier power in these yards would be a waste of money and tend to increase the cost.

63. Is it not a fact that the weight of the engines used on through traffic and the speed at which they run into the terminals causes more damage to the tracks and creates greater expense on account of repairs and the depreciation of the tracks, than do the lighter engines used in doing the switching in your terminal yards?

Ans. The speed of the engines on through traffic within the terminals is no greater than that of the engines used in handling the city business; therefore the engines handling through traffic do not create any materially greater amount of damage to the tracks than the lighter engines. The depreciation of the tracks is due more to the elements than the volume of business—in fact, no charges for the depreciation of way and structures were included in this Exhibit; furthermore, the engines handling through traffic use only a small portion of the tracks constituting the terminals.

64. Is it or not a fact that the L. & N. R. R. Co. and the N. C. & St. L. Ry. maintain a fund for permanent improvements and betterments, which is taken out of earnings, and do they not require such a fund to be maintained by the N. C. & St. L. Ry. maintain a fund for permanent

tained by the so-called Nashville Terminals?

Ans. I do not know whether the L. & N. R. R. Co., or the N. C. & St. L. Ry. maintain such a fund for them-

selves, but I do know that no such fund is maintained by the Nashville Terminals as we have no revenue from which to maintain such a fund.

65. File a statement for the fiscal years 1912 and 1913 (ending June 30) showing what revenue the Terminal Company receives from the storage of baggage?

Ans. I file statement marked "Complainants' Cross-

Exhibit No. 2, showing this information.

66. File a statement covering the same period showing the revenue derived from the rental of space to Express Companies and from all other sources, such as dining rooms, lunch counters, telephones, slot machines and all other sources?

Ans. I file statement marked Complainants' Cross-

Exhibit No. 3, showing this information.

67. Are there any properties owned by the L. & N. R. R. Co., N. C. & St. L. Ry., or Louisville & Nashville Terminal Company within the Nashville Terminal limits consisting of warehouses or stores, which are rented to merchants or manufacturers occupying same?

Ans. Yes.

68. What does the rental of said property amount to per annum?

Ans. \$6,090.90.

69. What proportion is credited to the L. & N. R. R. 7 Ans. \$5,500.00.

70. What proportion is credited to the N. C. & St. L. Ry.?

Ans. \$590.90.

71. What proportion is credited to the L. & N. Terminal Company?

Ans. None.

Q. 72. Is there any other property leased or rented as brick, lumber or storage yards?

Ans. Yes.

73. What does the annual rental amount to, and how is it divided between the L. & N. R. R. N. C. & St. L. Ry.

and Louisville & Nashville Terminal Company?

Ans. \$5,595.48. The annual rental of property belonging to the L. & N. R. R. Co., is \$2,490.00; the annual rental of property belonging to the N. C. & St. L. Rv., is \$1,116.48; the annual rental of property belonging to the Louisville & Nashville Terminal Company is \$1,989.00; the latter is divided between the L. & N. R. R. and the N. C. & St. L. Rv. on basis of number of cars handled for each road between Gay street and South Spruce street. The L. & N. Terminal Company does not participate in this revenue.

74. What is the annual revenue derived by the socalled Nashville Terminals from switching city cars, and how is same divided between the L. & N. R. R., N. C. & St. L. Railway and the L. & N. Terminal Company?

Ans. The revenue derived from switching city cars for twelve months ending June 30, 1913, was \$39,114.89, which includes revenue for switching cars to and from the Tennessee Central, and was divided between the L. & N. R. R. and N. C. & St. L. Ry. on basis of the number of city cars handled for each road during the month in which the revenue was earned. The L. & N. Terminal Company does not participate in this revenue.

75. What is the annual revenue derived by the socalled Nashville Terminal from demurrage charges assessed against city cars and how is the same divided between the L. & N. R. R. Co., N. C. & St. L. Ry.

Co., and the L. & N. Terminal Company.

Ans. The Nashville Terminals derive no revenue from demurrage charges. Those charges are collected by and taken into account by the road for whose account

the business is handled.

76. What is the total revenue derived annually from all sources from the property and freight and passenger operations of the so-called Nashville Terminals, and how is same divided between the L. & N. R. R. Co., the N. C. & St. L. Ry. Co. and the L. & N. Terminal Company?

Ans. I file statement marked Complainants' Cross-

Exhibit No. 4, showing this information.

77. State whether you have applied the revenue so derived toward reducing the costs of the operations of the Terminal Company on all traffic handled by it, and

if not, why not?

Ans. Certainly not. The cost of the service is not reduced in any respect whatever by the fact that the L. & N. R. R., N. C. & St. L. Ry., or L. & N. Terminal Company happens to own property from which it realizes rental or other revenues, as such revenues have no connection whatever with the cost of switching service.

78. Is it not a fact that you are required each month to make a monthly statement, commonly called a comparative statement to the N. C. & St. L. Ry. and the L. & N. R. Co., and does not this statement show the actual cost for switching all cars to and from industries, warehouses or private sidings on the line of the Terminal Company and on the individual sidings and tracks of the L & N. R. R. Co. and the N. C. & St. L. Ry.?

Ans. We do not make that sort of a statement. We do report monthly operating expenses as per Interstate

Commerce Commission classification, and also report the revenue derived from the various sources.

79. And does not this comparative statement show the actual amount of money collected for this said switching charge?

Ans. The reports made show the actual amount of

money collected from switching charges.

80. Please file copies of your payrolls for all employes engaged in the terminal service at Nashville, Tenn., for each month, for the year ending January 31, 1914.

Ans. By advice of counsel, I have not undertaken to make copies of all the payrolls for all employes in the terminal service at Nashville for each month for the year ending January 31, 1914, for the reason that said payrolls are 637 in number and an enormous amount of clerical labor and expense would be incurred in making the copies. In lieu thereof, I file as Complainants' Cross-Exhibit No. 5, copies of the January, 1914 payrolls, 48 in number, and, in addition, a statement showing the totals of all the payrolls in each month from February to December, 1913 inclusive, 589 in number. If the Commission desires that copies of the other 589 payrolls be furnished, I will make and forward the same with the least possible delay, but protest that the work would be extremely burdensome and expensive and merely result in adding to the record an enormous amount of unnecessary detail.

81. Please file statement of the actual amount of money received by the Terminal Company for switching competitive freight and for switching non-competitive freight received from and delivered to the Tennessee Central Railroad, including the revenue received from switching live-stock off of the Tennessee Central Railroad during the period covered by your Exhibit No. 8, and show how same was divided between the L. & N. R. R. Co., the N. C. & St. L. Ry. and the L. & N. Terminal

Company?

Ans. The actual amount of money received by the Nashville Terminals for switching freight received from and delivered to the Tennessee Central Railroad, including live-stock off the Tennessee Central Railroad, during the period covered by Exhibit No. 8, was \$4,220.68, and same was divided between the L. & N. R. R. Co. and the N. C. & St. L. Ry. upon basis of the total number of City cars handled for each road. The L. & N. Terminal Company did not participate in this revenue. The

amount does not include any revenue on competitive

freight, for no competitive freight was switched.

82. Have you in any item under the headings of "Maintenance of Way and Structures," "Maintenance of Equipment," on page 1 of your Exhibit No. 8, and on page 2, under the heading of "Transportation Expenses" and "General Expenses" charged the items of city, State and County taxes; if so, under what item have you included these taxes, and what amount of taxes have you charged up against each or any of said accounts?

Ans. No, the Exhibit does not include anything other than strictly operating expenses as prescribed by the Interstate Commerce Commission Classification. Taxes, interest, overhead charges, or additions and betterments are not included in the cost of \$4.13 per car and are not permitted to be charged to operating expenses by the Interstate Commerce Commission, and if charges for these various accounts should be included, the cost per car for switching would have been considerably more than \$4.13.

83. If you have taken the matter of taxes into consideration in any of the items referred to under the headings of "Maintenance of Way and Structures." "Maintenance of Equipment," "Transportation Expenses" or "General Expenses," did you take into consideration the items of personal property assessed against the L. & N. Terminal Company by the City of

Nashville?

Ans. Answered by my last answer above.

84. Is it not a fact that the I. & N. Terminal Company has not paid any city taxes on its personal property used exclusively within the limits of the terminal yards at Nashville since 1908?

Ans. I have nothing to do with the payment of taxes. I, therefore, know nothing about the matter re-

ferred to in the question.

85. Is it not a fact that in 1911, the L. & N. Terminal Company was successful in having the assessment of its personal property eliminated from the books of the City Tax Assessor and the books of the City Comptroller or City Tax Collector?

A. I know nothing about the matter referred to

in the question.

86. Please file an itemized statement showing the number of freight cars of through traffic switched by your company for the L. & N. R. R. Co. and the N. C. & St. L. Railway, respectively, letting this statement show by months the number of cars so switched for each of

said companies for the period covered by your Exhibit . No. 8.

Ans. I do not understand what is meant by "itemized statement" showing the number of freight cars of through traffic switched by the Terminal Company for the N. C. & St. L. and the L. & N. respectively, but I file statement marked Complainants' Cross-Exhibit No. 6, herewith, showing how many of the 206,644 cars shown on my Exhibit No. 8 were handled for each company.

87. On page 1 of your Exhibit under Maintenance of Way and Structures, you have the item of "Telegraph and Telephone Lines" which item you allocated to passenger \$51.60, and to freight \$787.31. Please give the items constituting the \$51.60 and the items constituting the \$787.31, and give your reasons fully and in detail why you allocated \$51.60 to passenger traffic, and \$787.31 to through and city freight traffic?

This item was not allocated to passenger and freight, but was prorated each month on basis of hours of yard crews engaged in each class of service. \$726.04 of this item was for wages of electrician working on our private telephone lines, \$60.00 labor recharging telegraph batteries, and the remainder was for material repairing private telepone and telegraph circuits.

88. On page 2 of said Exhibit, you have a similar item, in which you charge \$196.52 to passenger traffic and \$3,000.00 to through and city freight traffic. Please give the items constituting the \$196.52 and the items constituting the \$3,000.00 and give your reasons fully and in detail why you allocated \$196.52 to passenger traffic and

\$3,000.00 to through and city freight traffic?

This item was not allocated to passenger and freight but was prorated as were the others, each month. The total \$3.196.61 includes \$1.650.00 wages of operators not engaged in dispatching trains; \$1,196.30 rental of telephones; \$13.50 repairs of electric self-regulating clocks: \$91.25 wages of porter serving telegraph offices; \$245.56 ice and other supplies to operators.

Do you operate separate sets of telephones in the conduct of the freight and passenger business? If you do not, why is it you charge the items of \$51.60 and \$196.52 to passenger traffic under the account "Maintenance of Way and Structures" and charge the item of \$787.31 and \$3,000.00 for telephone services to through and city freight traffic?

We have very few telephones which are exclusively used in either class of service, strictly speaking, none of them are; therefore, we prorate these expenses each month on the basis of hours of yard crews engaged in each class of service.

90. Do you own your own telephones, or do you secure this service from the Cumberland Telephone &

Telegraph Company?

Ans. We rent all our phones from the Cumberland Telephone & Telegraph Company except a few private phones used between yard offices and block stations,

which are owned by the two railroad companies.

91. On page 1 of your Exhibit, you have the item of "Superintendence" charged, passenger traffic \$228.60 and through and city freight traffic \$3,483.98. Please state how you arrive at the item of \$228.60, charged to passenger traffic, and the item of \$3,483.98 charged to through and city freight traffic?

Ans. The total charges to passenger and freight in

this item were \$3,712.58, made up as follows:

None of this was allocated directly to passenger and freight. The amount each month was divided on the hours of service basis for that month as already explained.

92. What is the present actual cash value, in your opinion, of each of the locomotives, now in the terminal

service at Nashville, Tenn.?

Ans. I do not know the present actual cash value of these locomotives and do not know of any way in which the present actual cash value of the locomotives can be ascertained, but I have obtained and file herewith a statement of the estimated present value as furnished by the officers of the road named. This statement is marked Complainants' Cross-Exhibit No. 7.

93. Are the hours referred to in your Exhibit No. 8

"crew" hours?

Ans. They are "man hours" put in by each foreman and switchman.

94. How many crews are used in each day of 24 hours in switching passenger traffic and through and city freight traffic?

Ans. It varies from day to day according to the volume of traffic; we work from 22 to 32 crews days and from 11 to 25 crews nights, or a total of 33 to 57 each twenty-four hours.

95. How many crews are used in each day of twenty-

four hours in switching city cars exclusively?

Ans. From 19 to 43. The difference between the minimum and maximum number of engines used daily in the handling of city business is accounted for by the fact that on Sundays and Sunday nights we use very few engines in the handling of city business.

96. How many crews are used in each day of twenty-four hours in switching through cars exclusively?

Ans. We assign from ten to twelve crews daily to make up and break up trains. These crews handle both through and city cars.

97. How many crews are used in each day of twentyfour hours in switching passenger traffic exclusively?

Ans. Two.

98. How many men constitute a switching crew and

what are the duties of each?

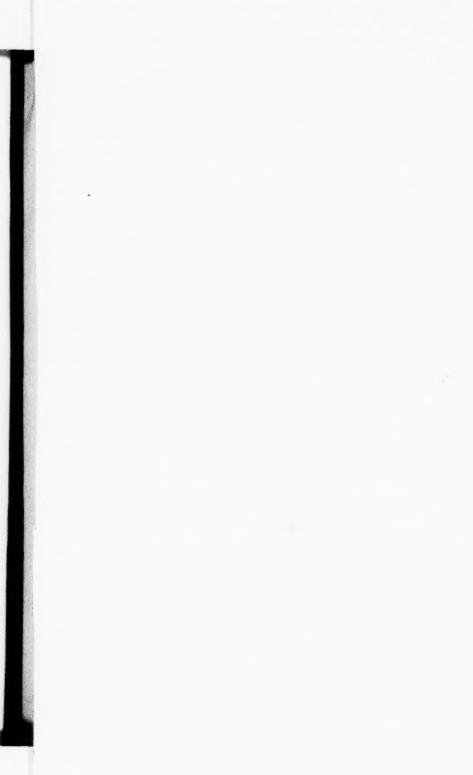
Ans. A foreman and two or more switchmen constitute a switching crew. We do not use less than two switchmen with any crew, and we use as many as ten and sometimes twelve switchmen on the crews engaged in breaking up and making up trains. It is the duty of the foreman to keep record of cars handled and supervise the work of switchmen and perform the work assigned him by the General Yardmaster and Yard Master. It is the duty of the switchmen to set and release brakes, couple and uncouple cars and air hose and throw switches.

99. Is it not a fact that the figures shown in your Exhibit No. 8 were compiled by clerks specially employed for the purpose, working under the supervision of Mr. Geo. W. Lamb, Second Assistant Comptroller of the Louisville & Nashville Railroad Company, and that you personally had nothing to do with the compilation of the Exhibit or the basis used in arriving at the figures shown

therein?

Ans. This is not a fact. The basis upon which these figures were gotten up was determined by me. The work was done by clerks assigned especially for that purpose, some of whom were in the service and some of whom were employed especially for that purpose, all of them working under the immediate supervision of Mr. J. L. Hopkins, who has had seventeen years experience in railroad office and accounting work with the L. & N., N. C. & St. L. and Nashville Terminals, eight years of which was in my office.

100. You do not know, personally, do you, from what



STATEMENT SHOWING DATE OF PURCHASE OF EACH MINALS BY THE L. & N. R. R. AND THE N., C. & ST. DATE ASSIGNED TO SERVICE IN NASHVILLE TER THE AMOUNT CHARGED AS DEPRECIATION ON E

(In response to Interrogatorie

STATEMEN

No. of Engine.	Date Acquired.	Original Cost.	Date Assigned to Service in Nashville Terminals, August, 1909.	Tractive Power, Pounds.	Weight Pounds.	Prior July,
L. & N.			4			
334	1890	\$ 5,061.04	Aug. 1909	18,000	214,000	\$ 2,500
346	1905	5,565.84	Nov. 1909	18,100	206,000	2,000
347	1905	5,572.09	Oct. 1908	18,100 -	196,000	2,000
411	1872	13,648.55	Aug. 1900	18,600	224,000	10,578
507	1881	13,687.62	Oct. 1906	24,300	216,000	9,111
510	1881	13,683.64	Jan. 1907	24,300	216,000	9,111
514	1881	10,220.51	Aug. 1900	22,200	216,000	5,644
527	1881	10,216.53	Jan. 1907	23,000	216,000	5,644
537	1882	13,957.32	Mar. 1905	23,000	216,000	9,387
541	1882	14,992.90	June 1910	23,000	216,000	10,420
543	1882	14,985.83	Dec. 1911	22,200	216,000	10,420
622	1886	8,085.80	Jan. 1907	24,800	248,000	2,644
626	1886	8,092.44	Feb. 1913	24,800	248,000	2,644
629	1886	8,092.05	Jan. 1907	24,800	248,000	2,644
643	1888	10,346.06	Feb. 1910	24,800	238,000	4,500
645	1888	10,347.26	Jan. 1910	24,800	238,000	4,500
769	1892	10,317.28	Jan. 1913	28,200	296,000	2,770
999	1898	10,242.54	Feb. 1911	36,300	320,000	1,444
2012	1889	7,171.16	Aug. 1900	19,100	196,000	2,405
2012	1891	8,060.52	Aug. 1900	19,100	196,000	2,985
2020	1903	13,047.50	Aug. 1908	27,600	270,000	2,005
2058	1904	13,180.35	Oct. 1904	30,600	286,000	1,232
	1801		000, 100.			
TOTAL.		\$228,574.83		519,700	5,136,000	\$106,599
N. & C.						
4	1882	\$ 12,750.00	Jan. 1910	16,960	159,050	
6	1882	12,750.00	Jan. 1900	16,960	159,050	
16	1880	8,750.00	Jan. 1910	16,342	159,030	
21	1886	7,600.00	Jan. 1910	17,509	170,300	
25	1886	7,613.34	Apr. 1911	17,509	170,300	
26	1886	7,600.00	Jan. 1911	17,509	170,300	
87	1889	8,500.00	Feb. 1910	17,509	170,300	
					170,300	
	1891	8,980,00	Feb. 1910	17,509		
123	1891 1891	8,980.00 8,980.00		17,509	170,300	
123 127	1891	8,980.00				
123 127 140	1891 1891	8,980.00 8,650.00	Jan. 1913 Jan. 1900	17,509 19,440	170,300 157,700	*******
123 127 140 141	1891 1891 1891	8,980,00 8,650,00 8,650,00	Jan. 1913 Jan. 1900 Jan. 1900	17,509 19,440 19,440	170,300 157,700 157,700	
123 127 140 141 142	1891 1891 1891 1891	8,980.00 8,650.00 8,650.00 8,650.00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900	17,509 19,440 19,440 19,440	170,300 157,700 157,700 157,700	
123 127 140 141 142 146	1891 1891 1891 1891 1896	8,980,00 8,650,00 8,650,00 8,650,00 8,635,00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905	17,509 19,440 19,440 19,440 19,440	170,300 157,700 157,700 157,700 157,700	
123 127 140 141 142 146 152	1891 1891 1891 1891 1896 1899	8,980,00 8,650,00 8,650,00 8,650,00 8,635,00 9,834,30	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911	17,509 19,440 19,440 19,440 19,440 28,600	170,300 157,700 157,700 157,700 157,700 243,000	
123 127 140 141 142 146 152 304	1891 1891 1891 1891 1896 1899	8,980.00 8,650.00 8,650.00 8,650.00 8,635.00 9,834.30 9,300.00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911 Feb. 1908	17,509 19,440 19,440 19,440 19,440 28,600 19,826	170,300 157,700 157,700 157,700 157,700 243,000 168,700	
123 127 140 141 142 146 152 304 305	1891 1891 1891 1891 1896 1899 1888	8,980,00 8,650,00 8,650,00 8,635,00 9,834,30 9,300,00 9,300,00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911 Feb. 1908 Sept. 1913	17,509 19,440 19,440 19,440 19,440 28,600 19,826 19,826	170,300 157,700 157,700 157,700 157,700 243,000 168,700 168,700	
123 127 140 141 142 146 152 304 305 306	1891 1891 1891 1891 1896 1899 1888 1888	8,980,00 8,650,00 8,650,00 8,650,00 9,834,30 9,300,00 9,300,00 9,300,00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911 Feb. 1908 Sept. 1913 Aug. 1907	17,509 19,440 19,440 19,440 19,440 28,600 19,826 19,826	170,300 157,700 157,700 157,700 157,700 243,000 168,700 168,700	
123 127 140 141 142 146 152 304 305 306 315	1891 1891 1891 1891 1896 1899 1888	8,980.00 8,650.00 8,650.00 8,655.00 9,834.30 9,300.00 9,300.00 9,300.00 8,650.00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911 Feb. 1908 Sept. 1913	17,509 19,440 19,440 19,440 19,440 28,600 19,826 19,826 19,826 19,826	170,300 157,700 157,700 157,700 157,700 243,000 168,700 168,700 156,400	
123 127 140 141 142 146 152 304 305 306	1891 1891 1891 1891 1896 1899 1888 1888	8,980,00 8,650,00 8,650,00 8,650,00 9,834,30 9,300,00 9,300,00 9,300,00	Jan. 1913 Jan. 1900 Jan. 1900 Jan. 1900 June 1905 Feb. 1911 Feb. 1908 Sept. 1913 Aug. 1907	17,509 19,440 19,440 19,440 19,440 28,600 19,826 19,826	170,300 157,700 157,700 157,700 157,700 243,000 168,700 168,700	

THE ENGINES FURNISHED THE NASHVILLE TERLE 'Y, THE ORIGINAL COST OF EACH ENGINE, THE MALS, TRACTIVE POWER, WEIGHT, AND BY YEARS AND OF SAID ENGINES.

es)s. 49, 50, 51, 53 and 54.)

NT 1. 1.

6 AMOUNT CHARGED FOR DEPRECIATION.

907-08		1908-09		1909-10		1910-11		1911-12		1912-13	191	3-Jan. 1914
202.00		200.00		222.22								
200.00	*	200.00	*	200.80	*	201.91	\$	202.00	\$	202.44	\$	101.22
220.00		220.00		220.80		221.91		222.14		222.63		111.31
220.00		220.00		220.80		221.91		222.22		222.88		111.44
543.15		543.15		543.95		545.06		364.24		2.80		1.40
544.46		544.46		545.26		546.37		547.12		547.50		273.75
544.46		544.46		545.26		546.37		546.61		547.34		273.67
405.78		405.78		406.58		407.69		408.04		408.82		204.41
405.78		405.78		406.58		407.69		408.00		408.66		204.33
555.50		555.50		556.3 0		557.41		557.80		558.30		279.15
596.83		596.83		597.63		598.74		599.22		599.71		299.85
596.83		596.83		597.63		589.74		598.74		599.43		299.71
321.79		321.79		322.19		322.76		323.11		323.43		161.72
321.79		321.79		322.19		322.76		323.08		323.70		161.85
321.79		321.79		322.19		322.76		323.00		323.68		161.84
412.00		412.00		412.38		412.92		413.29		413.84		206.92
412.00		412.00		412.40		412.97		413.14		413.89		206.94
410.83		410.83		411.21		411.75		411.99		412.69		206.34
407.80		407.80		408.20		408.77		409.39		409.70		204.85
284.24		284.24		285.04		286.15		286.30		286.75		143.37
319.40		319.40		320,20		321.31		321.75		322.42		161.22
520,23		520.23		520.63		521.20		521.34		521.80		260.90
525.30		525,30		525.70		526.27		526.62		527.22		263.62
89.96	*	9,089.96	*	9,103.92	*	9,123.42	*	8,949.14	\$	8,599.63	\$4	,299.81
186.00	*	186.00	*	186.00	*	186.00		186.00		100.00		07.70
186.00	Ф	186.00	.2.	186.00	T	186.00	40	186.00	\$	186.00	*	67.50
86.00		186.00		186.00		186.00		186.00		186.00		93.00
225.00		225.00		225.00		225,00				186.00		93.00
25.00		225.00		225,00				225.00	rea.	225.00		37.50
25.00		225.00		225.00		225.00		225.00		225.00		112.50
:40.00		240.00		240.00		225,00		225.00		225.00		112.50
169.40		269.40		269.40		240.00		240.00		240.00		120.00
69.40		269.40				269.40		269.40		269.40		134.70
59.50		259.50		269.40 259.50		269.40		269.40		269.40		134.70
						259.50		259.50		259.50		129.75
59.50		259.50		259.50		259.50		259.50		259.50		129.75
59.50		259.50		259.50		259.50		259.50		259.50		129.75
59.04		259.04		259.04		259.04		259.04		259.04		129.52
14.10		214.10		214.10		214.10		214.10		214.10		207.05
55.00		255.00		255.00		255.00		255.00		255.00		127.50
55.00		255.00		255.00		255.00		255.00		255.00		127.50
55.00		255.00		255.00		255.00		255.00		255.00		127.50
59.50	-	259.50		259.50		259.50		259.50		259.50		129.75
87,94	*	4,287.94	*	4,207.94	*	4,287.94	*	4,287.94	*	4,287.94	\$2	,143.47
77.90	\$1	3,377.90	\$1	3,391.86	\$1	3,411.36	41	3,237.08	41	2,887.57	40	,443.28



know personally the accuracy of the information contained in any of the items of said Exhibit, do you?

Ans. These figures were obtained from the accounts kept in my office and from the car records kept in the office of the General Yard Master. As a matter of course, I did not undertake to personally do the work, but from my general knowledge of the accounts and records and to the best of my information, knowledge and belief the figures are correct.

101. Please state who prepared your answers to the questions submitted to you at the hearing of this case, and give the names of the parties who prepared them for

vou?

Ans. The answer to the question as to what rates were effective in the Terminal Tariffs was furnished by Mr. J. M. Dewberry, Assistant to Third Vice President of the L. & N. R. R. The explanation of the method of obtaining the cost, as shown in my Exhibit No. 8, was prepared by J. L. Hopkins and Mr. Geo. W. Lamb, Second Assistant Comptroller of the L. & N. R. R. under general directions given by me; because at that particular time I was required by our attorneys to be present at the court house at the hearing of this case. All other answers were prepared and dictated by me.

102. Please state whether or not you personally prepared the answers you have made to the above cross-interrogatories; whether you personally know all of the facts contained in your answers, and if your answers were prepared for you by any one, give the names of the different parties who prepared said answers, or who

assisted you in their preparation?

Ans. I have personally prepared the answers and am familiar with the facts contained in them and they are correctly stated according to my information, knowledge and belief. I have been assisted in the preparation of the data by Mr. Hopkins, referred to in previous answers, and by my Chief Clerk, Mr. E. G. Payne, and Roadmaster J. D. Haydon.

103. In answering the above cross-interrogatories, are you answering from written memoranda, or are you

giving your answers verbally?

Ans. I am answering from written memoranda.

And further this deponent saith not.

W. P. BRUCE.

Subscribed and sworn to before me at Nashville, Davidson County, Tennessee, this the 20th day of May, 1914.

(Seal.)

JNO. J. NORTON. Notary Public, Davidson County, Tenn.

I certify that I read the attached interrogatories to the witness W. P. Bruce, who answered same and his answers were written by me following the interrogatories as set out above, and read over to the witness who signed them in my presence as stated above. I further certify that I am not interested in the cause nor of kin or counsel to either of the parties.

Given under my hand and official seal at Nashville. Davidson County, Tennessee, this the 20th day of May, 1914. My Notarial Commission expires January 3, 1916. JNO. J. NORTON.

(Seal.)

Notary Public.

COMPLAINANTS' CROSS EXHIBIT No. 2.

STATEMENT No. 2 FILED IN ANSWER TO INTERROGATORY No. 65.

Showing revenue from storage of baggage for the fiscal years, 1912 and 1913.

1911-1912	1912-1913
July\$163.65	July\$212.15
August 210.70	August 228.75
September 246.40	September 347.45
October 217.80	October 257.50
November 202.85	November 227.90
December 181.55	December
January 216.40	January 223.85
February 186.30	February 163.40
March 212.65	March 165.95
April 209.35	April 211.80
May 241.75	May 221.50
June 232.25	June 240.65

COMPLAINANTS' CROSS EXHIBIT No. 3.

STATEMENT No. 3 FILED IN ANSWER TO INTERROGATORY No ce

140. 60.		
	1911-1912	1912-1913
Express Company	\$2,970.44	\$4,115,16
Dining Room	2.900.00	3,250.00
L. & N. and N., C. & St. L. Offices, Union Station	8,690.88	3,690.88
Pullman Company	420.00	420.00
Telephone Company	571.17	597.03
Slot Machines	None	None
Western Union Telegraph Co	None	104.19
Total	15,552.49	\$17.177.26
NOTE:—No slot machines in use during from slot machines as follows:		Revenue

December,	1913	***************************************	\$63.12
January,	1914	440+10011106+0+0+0+0+0+11111111111111111	41.55
February,	1914	\$0.00.000000000000000000000000000000000	35.98
March.	1914	***************************************	38 66

COMPLAINANTS' CROSS EXHIBIT No. 4.

STATEMENT No. 4 IN ANSWER TO QUESTION No. 76.

For fiscal year ending June 30, 1913, the total Revenue Storage of baggage	Was:
Rental of warehouses, etc.	17,177.26
Rental of storage yards Switching city cars (includes revenue from switching cars and from the Tennessee Central R. R.)	10
Total	\$70 87E 00

This revenue is divided as follows:

Rental of space to Express Co., etc., and storage of baggage is divided monthly as it accrues between the L. & N. R. R. and the N., C. & St. L. Ry., on basis of the number of all cars handled for each road between Gay Street and South Spruce Street. Rental of warehouses, etc., is credited to the L. & N. R. R. and N., C. & St. L. Ry. direct, as shown in answer to questions Nos. 69 and 70. Rental of storage yards is divided as shown in answer to question No. 73. Revenue from switching city cars, including revenue from switching cars to and from the Tennessee Central R. R., is divided as shown in answer to question No. 74.

The L. & N. Terminal Company does not participate in any of this

revenue.

COMPLAINANTS' CROSS EXHIBIT No. 5.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Superintendent's Office, during the month of January, 1914.

Superintendent 31 Chief Clerk 31 Asst. Chief Clerk 15½ do 15½ Timekeeper and Accountant 31 Car Distributor 31 Stenographer and Clerk 31 Clerk 31 Law Agent 15½	@ @ @ @ 125.00	\$325.00 125.00 50.00 50.00 90.00 85.00 70.00 50.00 62.50	Balance Names of Employees. \$325.00 W. P. Bruce 125.00 E. G. Payne 50.00 A. T. Hamilton, dis. 90.00 F. H. Crotzer, Jr. 85.00 W. H. Gwin 70.00 Mattie Lou Edge 50.00 P. F. Skelly 62.50 J. B. Armstrong, dis.
	125.00		62.50 J. B. Armstrong, dis.
Master of Trains 31 Clerk 31	@	165.00 65.00	62.50 J. B. Armstrong, dis. 165.00 F. H. Benjamin
Messenger31	0	35.00	65.00 Ida W. Wright 35.00 Geo. Goodfred

COPY.

\$1,235.00 \$1,235.00

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Union Station, during the month of January, 1914.

No.	Rate Per Day	Amt	Balance	Names of Employees.
	-			J. A. Cunningham
				loe A. Brown
				W. B. Reynolds
				I. H. Burkhardt
				E. M. Osborne
				G. D. Turner
				M. Grainger
			65.30	I. W. Chambers
	-			
	••••			J. O. Meher, dis.
			60.00	D. R. Hackney
			51.30	C. C. Hicks
	-			
				Leonard Hardaway
31				Thomas Wiseman
				Arthur Marcombe, d
				N. Manners
*****				E. E. Miller
			39.05	Frank Phelps
				J. R. Terhune
		30.00	30.00	R. E. Johnson
			30.50	W. H. Oliphant
11/2	**	1.50)		-
12	1.50	18.00	19.50	C. A. Palmoal
29	55.00	51.54	51.45	H. M. Bills
2	44	3.55	3.55	D. H. Kennedy
31	**	55.00		R. E. Watkins
31	1.50	46.50	46.50	Will Bronson
	Days 31 31 31 31 31 31 31 31 31 31 31 31 31	Days Per Day 31 @ 31 @ 31 @ 31 @ 31 @ 31 @ 31 @ 31	Days Per Day Amt. 31 @ \$140.00 31 @ 125.00 31 @ 150.00 31 @ 87.50 31 @ 85.00 31 @ 65.00 31 @ 60.00 31 @ 60.00 31 @ 60.00 31 @ 75.00 31 @ 75.00 27 75.00 65.30 27 60.00 52.25 31 @ 60.00 52.25 31 @ 7.75 27 27 60.00 52.25 31 @ 60.00 4.55 4 " 7.75 27 50.00 43.55 4.50 4 " 6.45 27 45.00 39.20 39.20 31 @ 60.00 31 31 @ 60.00 39.20 31 @ 55.00 39.55 9 " 15.95 1 30 1.00	Days Per Day Amt. Paid.

\$1,847.50 \$1,847.50

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Union Station, during the month of January, 1914.

				7		ages—om Due		
	lature ployment.	No. Days	Rate Per Da				Balance	Names of Employees.
Waitress	***********	29	\$30.00	\$28.05			\$28.05	Mrs. J. E. Totty
do	**********	7	**	6.75				Maggie McCabe
do	*************	26	**	25.20				Mollie Barbour
do	*******************	31	15.00	15.00				Mattle Peeler
Janitor		7	60.00	13.55				J. P. Blancq
do		24	48	46.45				J. P. Blancq
Sta. Port	er	26%	1.25	33.45				John Crowder
do	*************	31	44	38.75	\$5.35	\$8.80		Raleigh Morgan
do	****************	27	41	33.75				Glenn Miller.
do	****************	27	68	33.75		1.90		Walter Shelby

do	28	44	35.00		19.65	15.35	Tom Harris
do	31	44	38.75	21.30	3.45		Henry Tinnon
do	25 %	**	32.20				Brown Gilliam
do	4	44	5.00				Isham Johnson, dis.
do	28	44	35.00		12.45		Jim Johnson
do	31	86	38.75				Alf Bond
do	4	48	5.00				Arthur Hyde, dis.
do	4	**	5.00				Jim Gooch, dis.
do	2934	**	36.25		13.20		Clarence Arnold
do	5	**	6.25		10.00		
do	0	44	2.50				Percy Summers, dis.
do	101/	**					T. E. Huston, dis.
	101/3	**	13.10				Jim Hunter, dis.
do	2		2.50			2.50	Odell Summers, dis.
do	27	**	33.75				Tom Robinson
do	20	66	25.00		12.50		Arthur Hyde
do	20	44	25.00				Jim Gooch
do	6	**	7.50				Ed. Ross, dis.
	-						M. J. Smith
		_				71.75	M. T. Mallon
			\$621.85		-	\$621.85	
			4427.00			4071'90	

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Union Station, during the month of January, 1914.

Stoppages-

			To V	Vhom	Due.		
Nature No. Ra						Balance	Names of
of Employment Days	Day	Amt.	JTF	MJS	MTM	Paid.	Employees.
		\$3.75					Lane Talley
do 6	44	7.50					Clarence Mitchell, d.
do 21/2	44	3.10					James Gunter, dis.
do 21/4	44	3.10					Geo. McLean, dis.
do 3	44	3.75			\$3.75		Lawson Consett
U. S. Mail Porters30	44		11.45		+0		Frank Fanroy
do26	46	32.50					Mitchell Butler
do31	**		38.50				Gentry Campbell
do21	64	26.25					Richard Black
do30	**		22.95				Ed. Mask
do31	44	38.75	5.00				John Haunch
do31	44	38.75	0.00				Logan Ransom
do 4	46	5.00	3.10				Lem Graham, dis.
do30	44	37.50					Will McMassey
do31	64	38.75		6.35			Robert Stephenson
Baggage Truckman 3)			20.00	0.00		1.10	Robert Stephenson
do 2 (44	6.25		6.25		0.00	Thomas Dandley
U. S. Mail Porter 1	44	1.25		0.20			Thomas Bradley
do6	**	7.50				7.50	Osey McKinney, dis.
do 5	44	6.25)			4.50	Louis Caron, dis.
do 4	68		7.85			2 40	W G W
Baggage Truckman 1	**	1.25				3.10	M. C. Wesser
U. S. Mail Porter11	66	13.75				15.00	Danielas Datas
go17	**	21.25	,			10.00	Douglas Buford
Shed Sweeper31	44	38.75	21 60				Frank Hill
Broad St. Tower Ptr. 31	64	38.75	31.00				Wilkie Banks
Baggage Truckman31		38.75					Noah Evans
do31		38.75	20 75				Millard Bond
16		35.75	38.15			0.00	Will Jones

do28 " 35.00 do31 " 38.75 8.20

35.00 Chas. Bond 30.55 Everette Bond 215.40 J. T. Flynn 12.60 M. J. Smith 3.75 M. T. Mallon

\$643.70

\$643.70

CORRECT:

E. G. Payne.

F. H. Crotzer, Jr., Timekeeper. W. P.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Union Station, during the month of January, 1914.

Stoppages-

					Whom	Due.		
	Nature Employment	Days	Rate	Amt.			Balance Paid.	Names of
Baggage do do do do do do do do do do	3 Truckman						\$00.00 27.35 38.75 7.80 16.00 38.75 38.75 0.00 32.30 38.75 3.75 88.00	Employees. Robert Sherrell Robert Robinson Herschel Cason Fred Meadows Will Hawkins Date Laine Geo. Owen Walter Jackson Joe Buckner Ed Harris Mayhue Wilson Riley Watkins J. T. Flynn M. J. Smith
								- Committee

\$421.25

\$421.25

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Carpenters and Painters, during the month of January, 1914.

	of Employment.	No. Days	Rate Per Day	Amt.	Balance Names of Paid. Employees.
Superviso		31	@	\$110.00	\$110.00 W. G. Stewart
Foreman	Carpenters	31	@	82.50	82.50 J. N. Jones
Carpenter	*************************	26	\$2.50	65.00	65.00 H. B. Barrack
do	***************************************		66	66.25	66.25 F. A. Nelson
do	***************************************	261/2	84	66.25	66.25 F. L. Osborn
do	***************************************	26	44	65.00	
do	*************************	28	44	70.00	65.00 W. D. Mitchell
do	************************	281/4	44	70.60	70.00 G. M. Olinger
do	*****************************	2634	44	66.85	70.60 F. W. Duncan
do	***************************************		2.40	61.20	66.85 W. D. Brown
do	************************	261/2	2.50	66.25	61.20 J. A. Brown
do	***************************************	27	2.00		66.25 W. M. Sears
do			44	67.50	67.40 R. H. Luther
do			0.00	68.75	68.75 H. B. McSwiney
do	Laborar		2.20	56.65	56.65 J. T. Brown
40	Laborer	211/2	2.00	43.00	43.00 H. L. Beck

Brick Mason3/10	4.00	1.20	1.20 J. E. Crandall
Watchman Cumb. River B'dge 31	1.25	38.75	38.75 C. E. Etherly
do31	**	38.75)	
Pumper, East Nashville 6	20.00	3.85	42.60 Roy Conger
Foreman, Painters27	2.75	74.25	74.25 W. M. Kepler
Painter25	2.40	60.00	60.00 Henry Hudson
do25 ¾	**	61.80	61.80 S. K. Thompson
Tinner21½	2.50	53.75	53.75 C. A. Harrison

\$1,358.15 \$1,358.15

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Watchmen, during the month of January, 1914.

Nature of Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Chief Special Agent	10	\$100.00	\$32.25	\$32.25	S. J. McGuire, dis.
do	21	**	67.75		S. J. McGuire
Yard Watchman	31	@	50.00		M. E. Harper
do	31	@	50.00		J. T. Owens
do	31	@	50.00		Joe Thompson
do	29	50.00	46.75		J. E. Lacey
do	31	@	50.00		W. P. Joyner
do	31	@	50.00		D. B. Collier
do	28	50.00	45.15		E. C. Bennett
do	31	@	50.00	50.00	H. T. Dardis
do	5	50.00	8.05		O. H. Kennedy, dis.
do	24	**	38.70		O. H. Kennedy
do	29	44	46.75		John Collins
do	31	@	50.00		N. H. Townsend
do	30	50.00	48.40		J. W. Holmes
do	22	44	35.50		H. L. Baker, dis.
do	9	**	14.40	14.40	J. L. Baker
do	2	**	3.25		Geo. Burrell
do	1	**	1.60		J. D. Cantrell
do	7	**	11.30		D. J. Peeler

\$749.95 \$749.95

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

E. G. Tayne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Crossing Watchmen, during the month of January, 1914.

Nature of Employment.		Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Chestnut Street	7	\$1.25	\$8.75	\$8.75 G.	A. McNarrus
_ do	22	**	27.50		H. Brown
Ewing Ave.	31	**	38.75		W. Finney
do	31	64	38.75		S. Frazier
Fog Street	31	1.50	46.50		R. Allen
do	31	**	46.50		D. Clay
Church Street	31	**	46.50	46.50 Jo	hn Watson

Market Street31	1.25	38.75	38.75 J. R. Watkins
" 31	44	38.75	38.75 W. C. Jordan
College Street25	66	31.25	31.25 Jim Goad
do 8	44	10.00	10.00 E. H. Marcum
do23	**	28.75	28.75 E. H. Marcum, dis
Clay Street29	44	36.25	36.25 W. C. Hargrove
do31	44	38.75	38.75 Oble Davis
Addison Ave27	44	33.75	33.75 H. W. Ward
do31	88	38.75	38.75 I. J. Johnson
Clifton Pike 1	44	1.25	1.25 W. R. House
do28	84	35.00	35.00 W. M. Hodge
Charlotte Pike31	1.50	46.50	46.50 J. R. Harness
South Cherry St31	1.25	38.75	38.75 Riley Hunter
do31	44	38.75	38.75 J. J. Allen
Extra Watchmen28	64	38.75	38.75 Geo. Burrell
do16	44	20.00	20.00 J. D. Cantrell
do24	**	30.00	30.00 B. W. Ballard
do10	44	12.50	12.50 D. J. Peeler
	-	806.00	\$806.00

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Operators and Signalmen, during the month of January, 1914.

danes ter	ating to Operators	and Si	gnaimen,	during	the month of January, 1914.
		No.	Rate		Balance Names of
Nature	of Employment.	Days	Per Day	Amt.	Paid. Employees.
Operator,	Foster St	31	@	\$60.00	\$60.00 G. H. Sanderson
do	*****************************	31	0	60.00	60.00 Edmund Cole
do	******************************		0	55.00	55.00 J. D. Cook
Signalman	Cum. Riv. Bridge		@	75.00	75.00 R. T. Clark
do	***************************************	31	0	75.00	75.00 W. O. Hudson
do	***************************************		0	75.00	75.00 H. W. Spottswood
Operator,	Cedar St	2 7/12	\$55.00	4.90	4.90 J. H. Wells
do	#****************************	1	41	1.75)	
do	Kayne Ave	7	60.00	13.55	23.70 H. L. Ernest
do	Gleaves St	4	65.00	8.40	
do	Cedar St	24	55.00	42.60	
Signalman	, Cedar St	4	80.00	15.00	58.10 S. S. Wood
do	So. Cherry St	1	60.00	1.95	
Operator,	Cedar St2	6 4/12	55.00	46.70	48.65 H. O. Setzer
do	3101438010149901880031849999949999	3 8/12	**	6.50	20.00 Grover Cook
do	Gleaves St	4	65.00	8.40	
do	Church St	2%	60.00	5.00	
do	Cedar St	2 3/12	55.00	4.00	4.00 J. B. Bell
do		1	48	1.75	1.75 C. A. Baugh, dis.
do	***************************************	4/12	**	.60	.60 John Harwell
do	00-00-00-00-00-00-00-00-00-00-00-00-00-	1/12	98	.15	
Signalman	, Cedar St	31	@	80.00	80.00 E. G. Harris
Operator,	Church St		@	65.00	65.00 W. E. Everest
do	***************************************		@	65.00	65.00 Walter McGlothlin
do	***********	10	60.00	19.35	19.35 J. H. Webber, dis.
do	69898444008384000000000000000000000000000		**	35.55	35.55 J. H. Webber
Operator,	Kayne Ave	25	70.00	56.45)	
-		3	60.00	5.80 \$	
do	***********************************	27	60.00	52.25	52.25 M. J. Fitzhugh
do	******************************	26	44	50.30 }	
		5	70.00	11.30	
do		31	60.00	60.00	60.00 W. G. White

@	65.00	65.00 W. H. Glasgow
0	65.00	65.00 H. W. Oden
a	60.00	60.00 Louis Fischer
a	65.00	65.00 J. F. Harwell
80.00	2.60)	
65.00		50.85 L. G. Hankey
@	60.00	60.00 H. H. Hagan
	@ @ @ 80.00 65.00	65.00 60.00 65.00 80.00 2.60 65.00 48.25

\$1,428.70 \$1,428.70

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Operators and Signalmen, during the month of January, 1914.

Nature	of Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees,
Signalma	n, New S. Tower	28	\$75.00	\$67.75	\$67.75 J.	S. Johnson
do	******************************	12 6/8	65.00	26.75		. C. Dunn
do	*************************	31	@	55.00		C. Smith
do	*************	3	80.00	7.75	00.00	O. Dillitti
do	Cedar St	25	44	64.50	77.40 E	ugene Jones
do	Broad St	2	**	5.15	******	agene somes
Signalman	n, Bostick St	31	(a)	60.00	60 00 J	P. Burns
do	*************************		@	60.00		J. White
do	******************************	31	<u>@</u>	55.00		. L. Lovell
do	Park St		@	60.00		. J. Pegram
do	***************************************	31	@	60.00		7. J. Cullom
do	************************	31	@	55.00		. A. Raymen
do	11th Ave. N	31	@	65.00		rank Shields
do	***************************************	31	@	60.00		. Floyd
do	**************************	31	@	55.00		7. A. Carter
do	Cedar St		@	80.00		erman Cook
do	Broad St	27	65.00	56.60		7. C. Smart
do	***************************************	32	44	67.10		V. Claxton
do	******************************	31	@	55.00)		v. Clarton
		1	**	2.10	57.10 J.	V. King
do	Tower No. 3	28	80.00	72.25		M. Flanagan
do	**********************	24	65.00	50.30	50.30 E	N. Adams
do	************************	31 4/8	55.00	55.90		I. Lawrence
do		1	3.50	3.50		aymond Wood
do	Spruce St	31	@	80.00	80.00 M	. McGrady
do	**********************	31	@	80.00	80.00 W	M. Hubbard
do	*******************************	31	a	75.00	75.00 B	J. Harvey
do	Oak St		@	70.00	70.00 W	. D. Reynolds
do	******************************	31	@	65.00	65.00 W	alter Copeland
do	***************************************	30	55.00	53.25	53.25 C.	E. Hailey

\$1,622.90 \$1,622.90

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Operators and Signalmen, during the month of January, 1914.

Nature of Employment. No.	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Signalmen, So. Cherry St31	@	\$60.00	\$60.00 R	L. Alley
do30	\$60.00	58.05	58.05 D	H. Grant
do31	@	55.00	55.00 W	. H. Steele
do X Office S. Nashv'e31	@	60.00	60.00 S.	B. Mays
do31	@	60.00		W. Crockett
do31	0	55.00		ayce Crockett
Utility Oper, and Sig31	0	70.00		W. Naylor
Pensioner31	0	30.00		mes Quinn

\$448.05 \$448.05

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Clerks, Callers, Messengers, etc., during the month of January, 1914.

	No.	Rate		Balance Names of
Nature of Employment.	Days	Per Day	Amt.	Paid. Employees.
Chief Yard Clerk	31	@	\$90.00	\$90.00 Van Alley
Stenographer	31	@	65.00	65.00 Alberta Williams
Time Keeper	31	@	70.00	70.00 W. H. Sanders
Report Clerk	2	\$70.00	4.50)	
	31	@	70.00	74.50 S. J. Lawrence
Interchange Clerk	31	@	70.00	70.00 P. T. Waggoner
Night Chief Clerk	31	@	70.00	70.00 L. I. Lavender
Report Clerk	26	70.00	58.70	58.70 H. M. Bishop, dis.
do	3	**	6.75	6.75 H. M. Bishop
Message Clerk	31	@	65.00	65.00 H. V. Lechleiter
Report Clerk	31	@	65.00	65.00 S. R. Hallen
Asst. Interchange Clerk		@	60.00	60.00 A. G. Myers
Record Clerk	31	@	65.00	65.00 H. H. Bamendale
do	31	@	65.00	65.00 N. T. McLean, dis.
do	31	@	60.00	60.00 H. M. Crowe
do	31	@	60.00	60.00 D. J. Drumwright
do	31	a	55.00	55.00 C. D. Slate
Home Route Clerk	31	@	50.00	50.00 C. D. Plicque
do	1	50.00	1.60)	
Seal Clerk	28	**	45.15	46.75 H. L. Wilson
Report Clerk		55.00	23.05	
Seal Clerk	11	50.00	17.75	51.45 E. J. Bray
Bill Clerk	6	55.00	10.65	
Report Clerk	15	50.00	24.20	24.20 G. H. Wells
Bill Clerk		55.00	49.70)	
Tonnage Clerk	3	60.00	5.80	55.50 Herman Pfister
Bill Clerk	15	55.00	26.60	
Seal Clerk	1	50.00	1.60	
Tonnage Clerk		60.00	3.85	35.30 Fred Galligan
District Clerk		50.00	3.25	
Bill Clerk	22	55.00	39.05)	
Tonnage Clerk	9	50.00	14.50	53.55 J. F. Redmond
Bill Clerk		55.00	49.70	49.70 J. W. Church
Bill Clerk	31	@	55.00)	
Seal Clerk	1	50.00	1.60	56.60 Claire Bearden
Bill Clerk		55.00	44.35	44.35 A. T. Redd
Bill Clerk		55.00	44.35	44.35 D. H. Brown

Bill Clerk 3	55.00	5.30)	
Tonnage Clerk29	60.00	56.15	61.45 J. J. Cline
Bill Clerk 3	55.00	5.30	5.30 S. W. Coles

\$1,578.45 \$1,578.45

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Clerks, Callers, Messengers, etc., during the month of January, 1914.

Stoppages-

			To Wh	om Due.		
Nature	No.	Rate			Balance	
of Employment	Days	Per Day	Amt.	T.I.Co.	Paid.	Employees.
Seal Clerk		@	\$50.00		\$50.00	R. L. Taylor
do	29	\$50.00	46.75	\$2.65		L. W. Jeffries
do	22	44	35.50			E. O. Blackwell
do	31	44	50.00		50.00	R. T. Braldy
do		44	50.00	2.65		T. A. Smalling
do	28	**	45.15			C. M. Smith
do		**	29.05		29.05	J. H. Horn
do		44	27.40		27.40	Brown Taylor
Tonnage Clerk		60.00	54.20			H. B. Smith
do		50.00	35.50		35.50	Neil Claude
do		@	60.00			E. C. Russell
do		@	50.00		50.00	F. S. Nasworthy
do		@	50.00			J. R. Smith
Messenger	.261/2	25.00	21.35		21.35	Jesse Vaughn
do	7	50c	3.50)			
_	51/2	25.00	4.45		7.95	R. M. Moss
Tag Clerk		45.00	1.45			
Messenger	.30	25.00	24.20 \$		25.65	Robt. Helm
Porter	.31	@	35.00		35.00	F. A. Turpen
Clerk, Union Station		70.00	35.00			T. D. Skelly, dis.
do	.22	65.00	46.15		46.15	B. H. Hamilton
District Clerk, Cherry St.	31	@	75.00			D. H. Ensley
do		50.00	48.40		48.40	W. D. Ragan
do	31	@	50.00			W. H. Hargis
do		50.00	1.60		1.60	W. S. Green
do	-	@	50.00		50.00	C. D. Frey
do		@	50.00		50.00	S. A. Dews
Caller		1.00	10.00 }			
District Clerk		50.00	27.40 \$		37.40	Willie Frey
do		@	50.00		50.00	Wesley Moss
do	31	@	50.00			A. H. Johnson
Class va t					5.30	Travelers Ins. Co.
Clerk Union Station	151/2	70.00	35.00		35.00	
		\$1,2	02.05	\$1,	202.05	

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, or duties relating to Yard Clerks, Callers, Messengers, etc., during the month of Jazuary, 1914.

Stoppages— To Whom Due

					TO MATE	om Due.			
of	Natu	re yment	No. Days	Rate Per Day	Amt.	T.I.Co.	Balance Paid.		ames of aployees.
Chief T	agger	Day	30	\$65.00	\$62.90		\$62.90	H. G.	Clark
				@	45.00			James	
do		****************		ã	45.00	\$2.65			Brazzel
		Night		65.00	67.10	42.00			Finney
		But		@	45.00				Caruthers
do.			00	45.00	43.55			Frank	
		*************		1.00	23.00				Davis
do		***************************************		**	29.50				Buntin
do		***************		44	27.00				Church
do			04	**	31.00			John 1	
do			0.4	**	31.00				
do		***************************************	97	44	27.00			Jno. Pa	
			101/	66	12.50			W. L.	
do			01/	44	2.25				Pruitt, dis.
do			0.9/	44	3.75				Jackson
do				44	20.00			R. C.	
do	*****		20 .	44				John H	
do	*****		26	44	26.00				
do	900000		26	**	26.00				Logan
do	******		9		9.00			Cecil I	
do	*****				1.00				Ferbee
do	*****		24	50c	12.00				I. Shaw
						_	2.65	Travel	ers Ins. Co.
					589 55		\$589.55		

\$589.55 \$589.5

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yardmasters, during the month of January, 1914.

Stoppages— To Whom Due.

Nature No of Employment Day		y Amt.	Balance T.I.Co. Paid.	
Asst. Master of Trains 31	@	\$145.00	\$145.00	D. M. Caldwell
General Yardmaster29		140.00	140.00	W. H. Yater, dis.
do 2	**	9.05)	
Yardmaster11		44.35	53.40	C. E. Reid
Asst. Gen. Yard Master31	@	135.00	135.00	I. P. Brown
do Day29	125.00	116.95	116.95	J. R. Handley
do 2		8.05	8.05	A. Hazlewood
do Night30		120.95	120.95	J. H. Lynn
do 1	44	4.05	4.05	W. H. Carney
Yardmaster, No. Yard10		40.30	40.30	C. E. Reid, dis.
do10		40.35	40.35	B. S. Whitehurst
do27		108.85	108.85	A. F. Smith
do 7	44	28.25	28.25	J. M. Smith
do So. Yard31		125.00	125.00	J. W. Forehand

do	27	**	108.85	4.05 Jno. Clatinger
do		**	4.05	108.85 H. T. Carter
do	East Yard30	46	120.95	
do	1	64	4.05	4.05 H. F. Price
do	So. Yard25	44		120.95 W. E. Oakley
do	_	"	100.80	100.80 S. P. Frey
	6		24.20	24.20 Jas. Kilmaster
do	Clay St31	**	125.00	125.00 D. J. Roberts
do	West Nash24	44	96.75	96 75 E T TITLE
do	7	44	28.25	96.75 E. L. Worley
Yard Di	spatcher27	95.00	82.75	28.25 G. T. Alexander
do		30.00		82.75 M. J. Mulloy
uo	4		12.25	
	26	90.00	75.50 \$	87.75 E. H. Smith, dis.
do	16	**	46.45 45.00	1.45 M. P. Patterson
do	13	44	37.75	27.75 M. D. Patterson
do	7	44	20.30	37.75 M. P. Patterson, dis.
	•		20.00	20.30 H. O. Fitzhugh, dis.
				45.00 Ballentine's Merc.
				Adj. Co.

\$1,954.05

\$1,954.05

CORRECT:

ay

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Herders and Switch Tenders, during the month of January, 1914.

Nature of Employment. No. Days	Rate Per Day @ \$65.00 55.00	Amt. \$65.00 60.80 4.20 \\ 1.75 \\ 60.80 2.10 2.10 2.10 65.00 65.00 52.40 2.10 63.00 3.55 \\ 4.20 51.45 53.25	5.95 C 60.80 I 2.10 H 2.10 H 65.00 G 65.00 H 2.10 F 9.85 H 4.20 J 51.45 H	Employees. N. W. Andrews E. Windrow C. A. McCabe D. H. Cave H. W. Guy H. B. Binkley H. Crostwate I. P. Cregor V. W. Dougherty McPeters L. W. Hackey B. Bell L. G. Sivley
do30	\$500.0		53.35 L	eonard Graves

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Foremen and Switchmen, during the month of January, 1914.

Nature of Employment.	No. Days	Rate Per Day	Amt.	Balance Names of Paid. Employees.
Yard Foreman	23.7	\$3.85	\$90.90	\$90.90 G. T. Alexander
do		44	107.80	107.80 C. R. Boner
do		81	80.35	80.35 J. J. Bontley
do		**	20.05)	outer of the Bourtey
Switchman	5-614	3.50	19.30	39.35 W. B. Booker
Yard Foreman	22-2	3.85	85.35	85.35 W. J. Brown
do			125.35	125.35 W. D. Cannon
do		44	108.45	108.45 W. H. Capps
do	27-314	44	105.10	105.10 W. H. Carney
do		44	124.55	124.55 H. E. Carrier
do		46	100.10	100.10 Jno. Clutinger
do		44	114.80	114.80 W. T. Courtenay
do		44	25.80)	11.00 W. I. Courtenay
Switchman		3.50	86.15	111.95 G. A. Davis
Yard Foreman			108.60	108.60 A. D. Dumont
do		44	75.85	75.85 S. J. Eady
do		44	104.45	104.45 D. M. Elliott
do		44	118.50	118.50 T. A. Evans
do		44	4.00)	110.00 1. II. Evans
Switchman		3.50	22.20	26.20 G. L. Ferguson,
Yard Foreman			125.00	125.00 J. L. Fletcher
do			20.40)	220.00 G. D. Fletchel
Switchman	14-8	3.50	51.45	71.85 G. E. Felts
Yard Foreman			117.30	117.30 G. W. Gassetty
do		**	108.45	108.45 J. W. Gee
do		44	12.05	12.05 A. L. Grammar
do			122.85	122.85 J. M. Griffith
do			83.70)	u. dimin
Switchman		3.50	33.95	117.65 S. H. Harned
			200.00	20200

\$2,302.80 \$2,302.80

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Foremen and Switchmen, during the month of January, 1914.

Nature of Employment.	No. Days	Rate Per Day	Amt	Balance	Names of Employees.
Foreman			\$118.00		H. Hassell
do			48.70)	4110.00 M.	11. Hassen
Switchman				93 30 8	E. Harrison
Yard Foreman			101.10		Hazlewood
do		**	69.30		G. Herndon
do		44	125.20		G. Hollinsworth
do	4-11	44	10.10)	120.20 0,	G. Hommsworth
Switchman	23-31/6	3.50	81.55	100 65 T	J. Holzafel
Yard Foreman		3.85	100.45	100.00 0.	J. Hoizarei
Switchman			14.75 (115.20 S	H. Horton
Yard Foreman	22-8	3.85	87.40	-10.20 D.	44. Horton
Switchman			32.85	120 25 C	M. Hunter
Yard Foreman	31-4	3.85	120.70		M. Jackson
do	29-614		113.80		H. Jackson
do			44.00)	220.00 11.	11. Jackson
Switchman	20-103	4 3.50	73.20 (117.20 A	S. Johnson
do	6-3	**	21.90		D. Boulison
Yard Foreman	17-91/6	3.85	68.60 (90.50 W	M. Johnson
do		44	101.10		R. Johnson

Switchman17-914	3.50	63.40)	
Yard Foreman 9-614	3.85	36.80 (
do21-5	0.00		99.20 W. B. Judd
Carlot a series and the series are the series and the series and the series are the series and the series and the series are t		94.05	
Yard Foreman 3-11/2	3.50	10.95	105.00 R. S. Kean
4-	3.85	23.10	23.10 R. S. Kean, dis.
3-	"	119.35	119.35 W. E. Kennon
do24-21/2	44	93.20	93.20 Jas. Kilmaster
do10-5	44	40.15	40.15 Thos. McCutcheon
do27-1	**	104.30	104.30 W. P. Maslin
do 2	44	7.70)	104.30 W. P. Masiin
Switchman 18-9	3.50	65.75	70 4F TO
Yard Foreman31-31/2	3.85		73.45 E. L. Morgan
do8	0.00	120.50	120.50 T. B. Neal
Switchman 20-3		30.80	
Yard Foreman 32.4	3.50	70.90 \$	101.70 H. O'Brien
4-	3.85	124.55	124.55 J. W. O'Hara
Charles b 4 73	**	4.00)	
Switchman26-1	3.50	91.30	95.30 J. T. Overstreet
do 6-4	44	22.20	ocide o. 1. Overstreet
Yard Foreman15-91/2	3.85	60.75	99 OF THE TE
do30-914	44	118.65	82.95 W. H. Phelps
	_	110.00	118.65 Wm. Meadows
	*0	697 70	9.605.50

\$2,687.70 \$2,687.70

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Foremen and Switchmen, during the month of January, 1914.

Nature of Employment.	No	Rate		Balance Names of
		Per Day	Amt.	Paid. Employees.
4-		\$3.85	\$93.05	\$93.05 H. F. Price
Owitab		**	28.30)	7.000 11. 1. 11100
4-		3.50	84.00	112.30 L. E. Revis
Daniel		44	86.15	L. L. Revis
roreman	3-71/2	3.85	13.90	100.05 J. A. Sanders
Yard Foreman	3-81/2	**	14.40	Louis G. M. Banders
Switching	14-8	3.50	54.95	69.35 R. B. Sellers
do	9-41/6		32.85	os.so R. B. Sellers
ard Foreman	23-41/6	3.85	90.05 (122.90 S. A. Simpkins
	24-716	**	114.15	114.15 S. D. Simpkins
do	20	**	77.00	77.00 J. M. Simpkins
do		44	8.50)	77.00 J. M. Smith
Witchman	000	3.50	100.75 (100 05 0 4 0
ard Foreman	31-7	3.85	121.70	109.25 G. A. Street
40	1-114	0.00		121.70 O. Street
witchman		3.50	4.35	*** **
do	100	3.50	98.60	102.95 W. W. Summers
ard Foreman	14		48.25)	***
do	20.0	3.85	53.90 \$	102.15 S. A. Taylor
do		"	113.65	113.65 R. M. Tharpe
do			101.10	101.10 Jas. Todd
Witchman			83.55)	
ard Foreman	1-1/2	3.50	3.65	87.20 O. Todd
do	28-1	3.85	109.15	109.15 C. F. Vaughn
4-	21-101/		84.25	84.25 B. S. Whitehurst
Witch		44	37.65)	
	20-41/2	3.50	71.20	108.85 Geo. Whittman
and Dans	21-101/	**	94.20)	Whiteman
ard Foreman	1	3.85	3.85 (98.05 Raymond Wood
do	28-11/2		108.30	108.30 R. A. Woodall
				A. Woodall

do	13-10	**	53.40)			
Switchman Yard Fore	man	3.50 3.85	36.50 } 30.80		Young,	dis.

\$2,056.20 \$2,056.20

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Nature o	of Employment.	No. Days F	Rate er Day	Amt.	Balance Paid.	Names of Employees.
Switchman				\$66.20	\$66.20 J.	
do	* *************************************		40.00	102.25		4
do	***************************************		66	90.55	102.25 C 90.55 W	
do	***************************************		64	7.45		7. T. Armstrong
do	***************************************		**	3.65		O. Armstrong, dis.
do	******************************		**	7.30		A. Baugh, dis.
do	*****************************		**	3.65		A. Baugh, dis.
do	095000000000000000000000000000000000000		01	7.30		M. Bagwell, dis.
do	000000000000000000000000000000000000000			102.10	7.30 H	
do	***************************************		44		102.10 G	
do	***************************************		**	29.50	29.50 E	
do	***************************************		44	66.05	66.05 W	
do			**	96.15	96.15 Jr	
do	*************************		**	7.00	7.00 B.	a . morement and
do	49499900+2101110000+1100240900000	7.00	**	74.85	74.85 B.	
do	*****************************		41	37.15	37.15 W	· · · · · · · · · · · · · · · · · · ·
do	************************		44	18.55	18.55 J.	
	*********************			18.10	18.10 H	. B. Binkley
do	********************		**	91.45	91.45 E.	O. Birdwell
	*****************		61	105.90	105.90 W	. C. Birdwell
do	050504000000000000000000000000000000000	30-3	44	105.90	105.90 C.	A. Booker
do	**************************		81	7.00	7.00 W	. B. Booker, dis.
do	***********		**	94.35	94.35 S.	R. Booker
do	*************	6-21/2	99	21.75	21.75 J.	C. Bowling
do	000000000000000000000000000000000000000	28-2	94	98.60	98.60 O.	
do	***************	6-4	**	22.20	22.20 J.	
do	****************	8-41/2	**	29.35	29.35 E.	

\$1,314.30 \$1,314.30

APPROVED:

CORRECT:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Nature o	of Employment.	No. Days 1	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Switchman	***************************************	29-214	\$3.50	\$102.25	\$102.25 V	V. F. Bugg
do	800.00000000000000000000000000000000000	6-3	44	21.90	21.90 J	. R. Byrum
do	000100011100000000000000000000000000000	1-1/2	44	3.65		E. Butler, dis.
do	400000000000000000000000000000000000000	27-5 1/2	9.6	96.15		Chandler
do	************************	24-4	64	85.20	85.20 J	. H. Camplin
do	***********************		0.8	94.95	94.95 E	I. P. Carter
do	***********************	29-31/2	93	102.55	102.55 J	. F. Carter

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SW

do	29-21/2	**	102.25	102.25 J. M. Caldwell
do	24-514	**	85.50	85.50 C. E. Chambers
do	5-2½	66	18.55	18.55 Ira Chockley
do	30-61/4	64	106.95	106.95 G. M. Clark
do	31-31/4	6-6	109.55	109.55 A. S. Cline
do	31-1	64	108.80	108.80 E. G. Clinton
do		**	3.65	3.65 S. W. Coles, dis.
do	13-9	**	48.25	48.25 S. W. Coles
do	29-21/2	**	102.25	102.25 Harry Colscher
do	····· 5-3	64	18.40	18.40 Harry Cook
do	30-3	44	106.40	106.40 C. N. Cooker
do	32-8	64	114.45	114.45 Herd Cope
do	14-9	64	51.75	51.75 A. J. Cox
do	3-11/2	44	10.95	10.95 O. C. Craddock, dis.
do	3-11/4		10.95	10.95 J. W. Crafton, dis.
do	31-41/4	**	109.85	109.86 W. C. Crafton
do	28-41/6	66	99.35	
do	8	44	28.00	
do	20-1/2	**	70.45	28.00 E. Z. Collins 70.45 J. L. Darnell
		_		- Durnon

CORRECT:

\$1,812.95 \$1,812.95 APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Nature	of Employment.	No.	Rate Per Day		Balance Names of Paid. Employees.
Switchman			\$3.50	\$54.80	\$54.80 J. J. Davis
do	*********************	21-1014	**	76.70	76.70 W. W. Davis
do	************************	2014	**	70.15	70.15 J. R. Donalson
do	*************	25-134	64	84.45	84.45 C. R. Doney
do	***************************************	23-214	44	81.25	81.25 J. E. Douglas
do	*************************	25-21/4	84	88.25	88.25 J. F. Duren
do	*****************************	2-2	**	7.60	
do	******************	6-3	44	21.90	7.60 C. L. Dutton, dis. 21.90 B. F. Ferris
do	*********************		**	111.40	
do	************************			62.70	111.40 G. W. Ferris
do	*****************************		64	27.10	62.70 G. W. Forehand
do	011101111111111111111111111111111111111		64	28.00	27.10 W. H. Forehand
do	***************		86	14.90	28.00 W. H. Forehand, dis
do	**************************		88	95.25	14.90 E. C. Frazier
do	***************************************		44	7.30	95.25 K. Frey
do	*************************		**	109.55	7.30 R. L. Fay, dis.
do	******************************		66	7.60	109.55 J. L. Gee
do	4************************		66	11.85	7.60 C. R. Gelerich
do	************************		68	7.00	11.85 W. J. Gheen
do	************************		64	18.55	7.00 W. J. Gheen, dis.
do	640103680000000000000000000000000000000000		66	81.25	18.55 J. H. Graves
do	******************************		44	18.55	81.25 H. B. Graves
do	000000000000000000000000000000000000000		**		18.55 R. E. Griggs
	*****************************		64	26.15	26.15 H. W. Guy
	000000000000000000000000000000000000000		**	80.50	80.50 H. T. Hall
de			81	98.75	98.75 J. W. Horn
do			**	3.65	3.65 Jesse Hargroves
	*************	20-3 72		92.05	92.05 O. H. Harrison
			-	-	

\$1,387.20 \$1,387.20

APPROVED:

CORRECT:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

			,		om Due.		
		No.	Rate			Balance	
Nature of	Employment	Days	Per Da	y Am	t. TICo.		Employees.
Switchman	1	5-21/2	\$3.50	\$18.25			H. W. Hartman
do	***************************************	28-31/2	44	99.05			W. T. Hays
do	***************************************		68	95.70			J. C. Hendrixson
do	***************************************	15-91/2	64	55.40			H. L. Hibdon, dis
do	***************************************	32-4	44	113.20			D. H. Hite
do	***************************************	10-51/2	**	36.65			J. H. Hill
do	64*******************		**	17.95			L. B. Holmes
do	***************************************		44	99.20			W. A. Hood
do	***************************************	5	44	17.50			W. A. Hood, dis.
do	*******************	24-3	44	84.90			H. A. Horn
do		5-2	44	18.10			F. H. Hatton
do	*************************	27-41/2	44	95.85			J. E. Hudson
do	***************************************		44	77.90			J. A. Jamison
do	***************************************	30-3	44	105.90			G. C. Jarrett
do		30-5	44	106.50			J. F. Johnson
do		22-61/2	44	78.95			W. J. Jarrett
do	***************************************	33-31/4	4.6	116.55			J. T. Johnson
do			68	11.25			T. H. Johnson
do	***************************************		64	66.65			J. B. Jordon
do	***************************************		44	32.85			E. U. Keith
do	***************************************	10-5	44	36.50	\$13.50		A. K. Kelley
do			44	7.45			R. P. Kidwell
do	***************************************	30-41/2	64	106.35			W. L. Lallemond
do		29-4	64	102.70			D. B. Lavender
do	42833349233444		**	21.60			E. I. Lavender
do	***************************************		44	87.65			John Lawson
do	*****************		2 "	69.70			A. J. Lee Travelers Ins. Co.
			_				

\$1,780.25

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Stoppages— To Whom Due.

				To Wh	om Due.		
Nature of I	Employment	No. Days	Rate Per Day	Amt.	NC&StL	Balance Paid.	Names of Employees.
Switchman		22-41/	\$3.50	\$78.35		\$78.35	J. O. Lemons
do	***************************************	12-714		44.15		44.15	W. D. Lester
do		11-814	**	41.10		41.10	H. A. Ligon
4-	***************************************	33-814		118.10		118.10	C. L. Lynch
do		14-7	**	51.15		51.15	D. W. McConnel
do	***************************************	30-9	62	107.75		107.75	J. C. McCabe
do		29-2	44	102.10		102.10	John McGovern
do		25-6	44	89.30		89.30	R. J. McIntosh
do		7-514		26.15		26.15	C. C. McLean
do		11-614	**	40.75		40.75	C. C. McLean, dis.
do		5-21/	64	18.25			W. H. McCulley, dis.
do		21-1/2	66	73.65		73.65	R. H. McPherson

do	17-1/4	44	59.65	.75	58.80 F. F. McWhiter
do	8	66	28.00		28.00 F. F. McWhiter, dis.
do	2-9	66	9.75		9.75 F. McPeters, dis.
do	25-7	48	89.65		89.65 W. N. Marlin
do	32-4	44	113.20		113.20 C. D. Martin
do	32-9	48	114.75		114.75 E. C. Martin
do	7-41/2	**	25.85		25.85 W. L. Mathis
do	5-21/2	44	18.25		18.25 G. A. Mayfield
do	3-11/2	44	10.95	.75	10.20 R. V. Murphee, dis.
do	4-3	**	14.90		14.90 A. C. Myers, dis.
do	29-91/2	**	104.40		104.40 J. W. Nall
do	28-4	44	99.20		99.20 W. L. Newton
do	10-7	**	37.15		37.15 J. B. Nichol
do	5-41/2	**	18.85		18.85 M. B. Omohundro
do	3-2	**	11.10		11.10 F. McPeters
					1.50 N. C. & St. L. Ry.

\$1,546.15 \$1,546.15

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Stoppages-

				1.0	whom	Due.		
	Nature aployment	No.	Rate		TITLE	mic.	Balance	
	-		Per Da		JTF	TICo	Paid.	Employees.
Switchma		.23-31/2		\$81.55			\$81.55	C. E. Peebles
do	************		**	81.55			81.55	Joe Peebles, dis.
do	************		44	15.80			15.80	R. L. Polk
do	************		**	41.25			41.25	A. B. Preston
do	***********		44	94.35	\$5.00		89.35	J. G. Price
do	************			76.70			76.70	T. J. Pruitt
do	***********		44	66.35			66.35	C. F. Pugh
do	***********	.32-4	44	113.20				A. F. Putman
do	***********	7-41/2	68	25.85			25.85	C. F. Potts
do	************		68	25.85			25.85	C. B. Phelps
do	************	.31-4	44	109.70				T. W. Rascoe
do	04	20-101/2	**	73.20			73.20	E. A. Raybum
do	4+***********	$.26 - 3\frac{1}{2}$	44	92.05			92.05	Chess Reed
do	*************	11-10	46	41.55				P. W. Reed
do	*************	. 4-31/2	66	15.05		\$9.75	5.30	C. I. Richardson
do	***************	1-1/2	44	3.65				F. A. Redmond, dis.
do	***************************************	32-4	44	113.20				J. T. Rice
do	*************	1-1/2	40	3.65			3.65	J. T. Rice, dis.
do	*************	2-1	41	7.30				H. J. Richards, dis.
do	***********	31-61/2	44	110.45				H. J. Richards
do	**************	28-1	48	98.30			98.30	John Roach
do	************	31-31/2	66	109.55			109.55	F. R. Rostick
do	*************	29-31/2	44	102.55			102.55	E. L. Ridley
do	*************	2-1	**	7.30				F. W. Rogers, dis.
do	**************	21	66	73.50				C. B. Sawyers
do	***************************************	2-1/2	44	7.15			7.15	J. M. Scott, dis.
							5.00	J. T. Flynn
							9.75	Travelers Ins. Co.

\$1,590.60 \$1,590.60

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

COPY

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

				Stoppa To Who			
		No.	Rate			Balance	Names of
Nature of	Employment	Days	Per Da	y Amt.	TICo.	Paid.	Employees.
Switchman		14-7	\$3.50	\$51.15		\$51.15	E. F. Searcy
do	********************		66	26.15		26.15	L. Sircy
do	4070		88	94.95		94.95	W. M. Sellers
do			46	22.50		22.50	H. D. Sensing
do	04***************		44	22.50		22.50	A. R. Shelton
do	****************		44	25.55		25.55	M. Shannon
do	***************************************	28-2	66	98.60			J. T. Smith
do		31-5	**	110.00			K. E. Smith
do	***************************************	24.3	**	84.90			S. F. Spears
do		26-714	66	93.30			E. W. Smithson
do			44	22.05		22.05	R. A. Stinson
do	***************************************		44	7.30		7.30	O. J. Sullivan
do			es	29.05		29.05	F. Tanner
do			44	31.05	\$11.65	19.40	C. W. Thompson
do	***************************************		**	14.60	,		S. J. Thompson, dis.
do			66	94.95			W. R. Thompson
do	******************		88	76.55		76.55	L. S. Thornton
do	0.0000000000000000000000000000000000000	31-5	**	110.00		110.00	A. H. Tucker
do	422222222222222222222222222222222222222		44	21.90			B. L. Turner
do	**		44	116.85		116.85	S. F. Utley
do	***************************************		44	55.40			G. W. Vestal
do	***************************************		**	4.25		4.25	G. W. Vestal, dis.
do	***************************************	25-3	**	88.40		88.40	E. T. Vick
do	***************************************	30-1034	"	108.20		108.20	F. R. Watrons
do	***************************************		**	66.35		66.35	G. C. Watson
do			41	113.20		113.20	Z. T. West
do	49999780100000000000000000000000000000000		48	3.95		3.95	A. R. Shelton, dis.
							Travelers Ins. Co.
			\$1	,593.65		\$1,593.65	

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper.

W. P. Bruce, Superintendent.

E. G. Payne.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Switchmen, during the month of January, 1914.

Nature o	of Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Switchman	***************************************	28-4	\$3.50	\$99.20	\$99.20 B	. P. Whitfield
do	**********************	1-14	44	3.65	3.65 H	I. O. Whitley
do	*******************************	7-31/	8.6	25.55	25.55 U	K. Wilkins, dis.
do		1-1/2	64	3.65	3.65 U	K. Wilkins, dis.
do	****************	28-7	44	100.15	100.15 V	V. W. Wilkins
do	030010000000000000000000000000000000000	3-21/	**	11.25	11.25 N	lick Williams
do	007828880044400538003089830308	8-4	44	29.20	29.20 V	Vm. Williams
do	**********************	1-1/2	44	3.65	3.65 V	Vm. Williams, dis.
do	.,,	4-21/	**	14.75	14.75 L	. F. Wright

\$424.05 \$424.05

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages-

						Vhom			
Natu	ire	No.	Rate		,			Balance	Names of
of Emplo	yment	Days	Per Da	y Amt	. HJB	JR	WQ	Paid.	Employees.
Road Ma	aster	.151/2	\$150.00	\$75.00				\$75.00	J. D. Haydon, dis.
do	*********	.15 1/2	150.00	75.00					J. D. Haydon
do	Clerk			75.00					D. P. Bibb
Foreman	Sec. 1	1 mo.	65.00	65.00					C. M. Weir
Appt. Se	c. 1	1 mo.	50.00	50.00					Will Shaw
Laborers	Sec. 1	.31	1.25	38.75					Dan Dunn
do	***********	.28	66	35.00	\$13.00				Henry Pointer
do	*********	.241/4	44	30.30	26.75		1.00		Joe Turner
do	***********	. 71/2	**	9.40	9.40				Chester Inman
do	*********	.24	44	30.00	8.00			22.00	Joe Baucomb
do	************		**	10.65	8.00			2.65	Joe Bradford
do	**********	.271/4	44	34.70	31.15		.80	2.75	Robert Radford
do	***********	.211/2	44	26.90		23.85			Jim Bailey
do			64	29.70		17.85		11.85	Balaam Dawson
do			44	28.75	12.70			16.05	Henry Brown
do	**********	.151/4	44	19.05					B. B. Hall
do		. 5	44	6.25	5.00				Dock Williams
do	**********	. 5	44	6.25	5.25			1.00	Harvey McHenry
do	**********		44	6.25	5.00				George Nickson
do	*********	231/4	64	29.05	18.00				Blake Johnson
do	**********		44	2.80	1.50			1.30	Henry Fite
do	***********		44	21.85	20.00				Ephriam Brown
do	***********		66	29.05	17.50				Andy Nelson
do	*********	61/2	**	8.10		7.35			Jonas Edmondson
do	************	21	**	26.25				26.25	John Green
do	***********	4	**	5.00	4.00			1.00	Charley Ligon
									H. J. Bandy
									Jeff Radford
								1.80	Wm. Quinn
							-	-	
2-2471/			\$7	74.05				\$774.05	

2-3471/4

CORRECT:

D. P. Bibb, Timekeeper.

J. D. Haydon, Roadmaster.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

S	toppages-	
To	Whom Due	

				-	LO MU	om Due		
Nat of Empl	ure oyment.	No. Days	Rate Per Day	Amt.	MJS	JTF	Balance Paid.	Names of Employees.
Fore. Tran Laborers 7 do do do do do do do	s. Gang.	1 Mo. g 17½19¾18½18¾	\$50.00 1.25	\$50.00 21.90 24.70 23.10 23.45 24.70 25.60	\$6.85 17.10 20.80 18.60	\$12.50	15.05 D 7.60 G 2.30 V 4.85 J 12.20 F 0.00 Sa 84.60 M 12.50 J	y. A. Toliver can Scott ceorge Davidson vill Martin ohn Butler coy Carter denry Manlove m Wiseman M. J. Smith T. Flynn
				2914 76			\$214.70	

\$214.70

\$214.70

1-131%

CORRECT:

APPROVED:

D. P. Bibb, Timekeeper.

W. P. Bruce, Superintendent.

J. D. Haydon, Roadmaster.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages— To Whom Due.

					TO MI	om Du	5.	
	ture loyment.	No. Days	Rate Per Day	Amt.	JBA	JTF	Balance Paid.	Employees.
Fore. Sec. Laborers do do do do do do		18 5½ 22½ 20¾	1.25	\$65.00 22.50 6.85 28.15 25.95 23.75 16.55 7.50	\$0.75 12.05 3.40	22.50 13.75 17.50	6.25 0.00 5.65 .15 6.25 4.35 7.50 16.20	Joe Bissell M. H. Hynes John Tipton Mable Headspeth George Shelton Cleave Reed Robert Radford Will Pope J. B. Armstrong J. T. Flynn

\$196.25

\$196.25

1-105

CORRECT:

APPROVED:

D. P. Bibb, Timekeeper.

W. P. Bruce, Superintendent.

J. D. Haydon, Roadmaster.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages-

				To Wh	om Du	e.
Nature of Employme	No. nt. Days	Rate Per Day	Amt.	MJS	JTF	Balance Names of Paid. Employees.
Fore. Sec. No.			\$65.00			\$65.00 W. A. Richardson
Appt. Foreman	do11	1.60	17.60	\$7.25		10.35 J. R. Mays
	do28	1.25	35.00	29.35		5.65 Silas Martin
	27	48	33.75	33.75		0.00 John Turner
	23%	41	29.70			29.70 Dick Miller
	13%	41	17.20	17.20		0.00 Abe Martin

do	181/4	48	22.80		22.80 Ike Hardiman
do	121/2	44	15.60	4.85	10.75 Jim Cheatham
do	15 1/4	44	19.05		19.05 Leonard Fisher
do	13%	86	17.20	\$17.0	
do	221/4	**	27.80	16.3	
do	41/4	44	5.30	5.3	
do	181/2	44	23.15	23.05	.10 Lee C Cater
do	9	44	11.25	8.10	3.15 Ed Lawrence 123.55 M. J. Smith 38.60 J. T. Flynn
		_	\$340.40		\$340.40

1-21734

CORRECT:

APPROVED:

D. P. Bibb, Timekeeper.J. D. Haydon, Roadmaster.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages— To Whom Due.

				T	o wno	m Due	3.	
Nature Employm	of No. ent. Days		Amt.	JBA	JTF	MJS	Balance Paid.	Names of Employees.
	No. 4 1 Mo do27 do19 ½ 	1.60 1.25	\$65.00 43.20 24.35 1.25 26.85 18.75 36.25 27.50 27.50 11.25 23.75 3.75	\$8.00	\$1.25 19.50 10.75 22.75 27.50 7.50 13.50 3.75	\$6.35	\$65.00 36.85 24.35 0.00 7.35 0.00 13.50 27.50 0.00 3.75 10.25 0.00 8.00	Matt Smith Gus Davis Jno. Harmon Jim Elliott Walter Brewer Budd Suggs John Thomas Howard Thomas John Newsom Will Western, dis. Frank Young Ben Hibdon J. B. Armstrong J. T. Flynn
			309.40				\$309.40	M. J. Smith

1-188

CORRECT:

APPROVED:

D. P. Bibb, Timekeeper.J. D. Haydon, Roadmaster.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages— To Whom Due.

	Rate Per Day	Amt.	ЈНА	JM	MJS	Balance Paid.	Names of Employees.
No. 31 Mo. do27							Wm. Kidwell A. L. Wilkerson
do28	1.25	35.00			\$8.80		Will Gordon
31	**		\$4.00 \$	15.60			Abe Cannon Joe Perkins
	nent. Days No. 31 Mo. do27 do28	nent. Days Per Day No. 3.1 Mo. \$65.00 do27 1.60 do28 1.25	nent. Days Per Day Amt. No. 3.1 Mo. \$65.00 \$65.00 do27 1.60 43.20 do28 1.25 35.0031 " 38.75	of No. Rate nent. Days Per Day Amt. JHA No. 3.1 Mo. \$65.00 \$65.00 do27 1.60 43.20 do28 1.25 35.0031 " 38.75	of No. Rate nent. Days Per Day Amt. JHA JM No. 3.1 Mo. \$65.00 \$65.00 do27 1.60 43.20 do28 1.25 35.0031 " 38.75	of No. Rate nent. Days Per Day Amt. JHA JM MJS No. 3.1 Mo. \$65.00 \$65.00 do27 1.60 43.20 do28 1.25 35.00 \$8.8031 " 38.75 24.20	nent. Days Per Day Amt. JHA JM MJS Paid. No. 31 Mo. \$65.00 \$65.00 \$65.00 do

do	13%	48	17.20		13.10	4.10	Hugh Hunt
do	221/2	44	28.10	4.00	20.65		Lee Williams
do	223/4	44	28.45		18.85	9.60	Eugene Freeman
do	20	44	25.00		18.75		Isaiah Dailey
do	21%	64	27.20		21.25		John Caruthers
do	18	44	22.50		2.50	20.00	Jim Booker
do	19	44	23.75		8.10		Wes McKinney
do	111/4	84	14.05		14.05		Will Anderson
do	31/4	44	4.40		2.50		Sherman Mayes
							J. H. Ambrose
							Jere Murphy
							M. J. Smith
		-	\$396.05			\$396.05	
			\$000U			\$000.00	

1-257¼ CORRECT:

APPROVED:

D. P. Bibb, Timekeeper. J. D. Haydon, Roadmaster. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages-

				T	o Who	m Due	Э.	
Nature	of No.	Rate					Balance	Names of
Employn	nent. Days	Per Day	Amt.	MTM	JTF	MJS	Paid.	Employees.
Fore. Sec	c. 2-B1 Mo.	\$65.00	\$65.00				\$65.00	J. L. Lee
Appt.	do1 Mo.	50.00	50.00	\$16.10			33.90	W. A. McInturff
Laborers	do21%	1.25	27.20		9	18.35	8.85	John Myers
do	23		28.75		\$14.00		14.75	Windrow Summers
do	241/4	44	30.30			5.10	25.20	Charley James
do	151/4		19.05	9.40			9.65	John Moore
do	24	44	30.00	5.00		19.30	5.70	Andrew Hunt
do	23 1/2		29.35			20.40	8.95	Londy Martin
do	211/2		26.85			17.75	9.10	Henry Bass
do	20 3/4	44	25.95			18.15	7.80	John Keith
do	28	44	35.00	23.75			11.25	Tom Smalling
do	181/4		22.80		12.85		9.95	Jim Rankin
do	11	44	13.75		4.65	9.10	0.00	Anthony Snelling
do	5	**	6.25				6.25	Louis Casin
							54.25	M. T. Mallon
							31.50	J. T. Flynn
							108.15	M. J. Smith
0.0001/		\$	410.25			-	\$410.25	

2-23614

CORRECT:

APPROVED:

D. P. Bibb, Timekeeper.

W. P. Bruce, Superintendent.

J. D. Haydon, Roadmaster.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages-	
To Whom Due	

			,	To Wh	om Du	e.	
ture oloyment.	No. Days	Rate Per Day	Amt.	JTF	MJS	Balance Paid.	TAMELLOD OF
do do	1 Mo28¼313123½24¼21¾2722¼25½16¾19¼	\$65.00	\$65.00 45.20 38.75 38.75 29.40	\$30.30 10.35 33.75 20.35	\$9.05 29.40 8.25	\$65.00 45.20 38.75 29.70 0.00 0.00 16.85 0.00 7.45 23.60 20.95 9.20 4.10	Employees. J. A. White A. B. Neal John Parish Albert Caruthers Frank Holt George Marshbanks John Adkins Dan Mayfield Vernon Patton Henry Dismukes Andrew Thompkins John Keel Charlie Rankin J. T. Flynn M. J. Smith
		•	418 60		-	9410.00	

1-275

APPROVED:

CORRECT: D. P. Bibb, Timekeeper.

W. P. Bruce, Superintendent.

J. D. Haydon, Roadmaster.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages-

					T	o Who	m Due	9.	
Nature		No.	Rate					Balance	Names of
Employn	nent.	Days	Per Day	Amt.	MTM	MJS	JTF	Paid.	Employees.
Fore. Sec.	No.			\$70.00					Wm. Quinn
Appt.		1 Mo.		50.00		9	20.40		Andy Myers
Laborers	do	6	1.25	7.50		\$7.50		0.00	Cooper Moore
do		31	44	38.75			6.50		Andy Hibbitt
do	*****	31	44	38.75		20110	0.00		Caleb Williams
do	400000	33	44	41.25		30.00	11.25		Fate Myers
do	*****	23 34	44	29.70		00,00	22.50		Dan Dowling
do		29 34	44	37.20		29.45	7.05		Jasper Hill
do	******	234	44	3.45		20120			Henry Lewis, dis.
do	******	26	44	32.50	7-10-0	9.80			W. S. Davis
do		25	66	31.25		21.20			Fred Hill
do	******	41/4	64	5.30		5.30			Lee Adams
do	******	241/4	66	30.30		17.20			John King
do	******	22	46	27.50			27.50		John Mathis
do	*******	5	66	6.25		3.80			Robert Gant
de	******	4	44	5.00		3.65			Will Mathews
do	******	10	44	12.50		5.25			Charlie Crockett
do	*****	91/4	64	11.55	8.75		2.80		Henry Lewis
do	******	1	84	1.25	1.25			0.00	Ed. Vance
									M. T. Mallon
									M. J. Smith
								75.50	J. T. Flynn
							-	10.00	o. I. Flynn
0.000			\$	480.00				\$480.00	

2-288

CORRECT:

D. P. Bibb, Timekeeper.

J. D. Haydon, Roadmaster.

APPROVED:

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Road Department, during the month of January, 1914.

Stoppages—

						11	OWNED	шри	5 .	
Nature		No.	Rate		4 TD	TTT	NETTAE	MIG	Balance Paid.	Names of Employees.
Employm	ent.	Days	Per Da	ly All	it. JR	JIF.	MIM	MID		Employees.
For. Sec. 1	I-A	1 Mo.	\$65.00	\$65.00					\$65.00	
House Re	nt			10.00					75.00	J. A. Chandler
Laborers		20	1.25	25.00	\$19.68	5			5.35	Tom Perry, dis.
do	******	.211/2	64	26.85	21.58	,			5.30	Lee McNeal
do		. 51/2	44	6.85	6.85	,			0.00	Ed. Walker
do		.20%	64	25.95	18.75				7.20	Andy Esmond
do	******		44	38.75	23.75				15.00	John Gordon
do	******		44	38.75		\$17.5	25			Tom Edwards
do		.191/4	44	24.05			\$21.1	.5	2.90	Jim Donahue
do		.18%	44	23.45					10.35	
do		.101/2	66	13.10				\$9.00		Will Lewis
do		.101/2	44	13.15	8.75			• • • • • • • • • • • • • • • • • • • •	4.40	Andy Stone
do		.101/2	44	13.10	13.10					N. B. Simmons
do		. 81/2	88	10.65	7.50					Henry Miller
do	******		44	12.50						Ezra Reed
do		61/2	44	8.10	8.10					Jim Summers
do		. 51/2	86	6.85	0.20			3.10		Dan Lewis
		/.		0.00				0.20		Jeff Radford
										J. T. Flynn
										M. T. Mallon
			\$	362.10				-	\$362.10	

CORRECT:

1-229%

APPROVED:

D. P. Bibb, Timekeeper. J. D. Haydon, Roadmaster. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Signal and Air Switch Inspectors and Porters, during the month of January, 1914.

No).	Rate		Balance	Names of
Nature of Employment. Day	ys Pe	r Day	Amt.	Paid.	Employees.
Signal Engineer	31	@	\$75.00	\$75.00	Geo. S. Pflasterer
Clerk	31	@	30.00	30.00	R. D. Eves
Gen. Sig. Foreman	31	@	95.00	95.00	H. E. Smith
Sig. Maintainer, C. R. B	31	@	75.00	75.00	B. C. Read
Chief Electrician	31	@	85.00	85.00	J. H. Hessey
Signal Maintainer	271/2	\$2.75	75.60	75.60	A. T. Hager
do	27	44	74.25	74.25	Roy McKee
do	27	44	74.25	74.25	Geo. Curley
do	31	@	60.00	60.00	T. N. Parsley
do	31	0	65.00	65.00	E. H. Harrison
do	31	@	60.00	60.00	R. G. Thompson
Signal Repairman	31	@	40.00	40.00	J. O. Zapp
do	31	@	52.50	52.50	Chas. Olinger
	31	@	50.00	50.00	Geo. Craddock
Electrical Helper	31	@	50.00	50.00	E. E. Walton
do3	31	@	50.00	50.00	L. H. Fulton
Porter	31	\$1.25	38.75	38.75	Henry Wilson
do	31	44	38.75	38.75	Mose Adams
do	31	44	38.75	38.75	Griffin Hatchie

do Pensioner do	 @ \$1.25	13.15 15.00 25.00	15.00	Na	tha	Mitchell n Davidso Painter,	on

\$1,181.00 \$1,181.00

CORRECT:

APPROVED:

F. H. Crotzer, Jr., Timekeeper. E. G. Payne.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Mechanical Department, Nashville, Tenn., during the month of January, 1914.

Stoppages-

				To Wh	om Du	e.	
	Nature	No.	Rate			Balance	Names of
of l	Employment.	Days	Per D	ay Amt.	TICo	Paid.	Employees.
Clerk, C	ar Dept	1 Mo.	@	\$60.00		\$60.00	Robt. Brinkley
Clk. Sup	. Dep. Store R.	1 Mo.	@	50.00			B. W. Dixon
Car Rec	ord Clerk	31	\$1.50	46.50			Ethln Jones
Water :	Sup. & Rep. Mar	n1 Mo.	@	90.00			Elmore Davy
Electrici	an	1 Mo.	a	115.00			Conrad Miller
Jt. Chief	Car Inspt	28.9	3.10	89.60			R. D. Whitaker
, do	**************	30.3	41	93.95			J. F. Greer
Jt. Car I	nsp. NT & TCR	R. 2.6	66	8.05			Jno. F. Pepper
do	Frt	15.5	3.05	47.25			Wm. Hewitt
do	*****************	29	2.70	78.30			E. L. Lee
do	***************		2.70	76.95			P. F. Carrall
do	******************	28.1	2.70	75.85			A. L. Davis
do	*****************	31	44	83.70			A. W. Gable
do	***************	27	44	72.90			Thos. McCabe
do	********************	17	44	45.90	\$2.65		W. J. Hartman
do	****************	27	**	72.90	,		R. H. Thompson
do	******************	29.7	44	80.20			M. R. Kelley
do	*********	29.7	44	80.20			S. D. Burkett
do	********************	30.5	**	82.35		82.35	A. A. Bosworth
do		27.5	4.	74.25		74.25	M. S. Connelly
do	******************	29.3	**	79.10			Ennis Horton
do	*****************	1	3.10	3.10)			
		29.2	2.70	78.85	5.25	76.70	E. L. Perry
do	*****************	1	3.10	3.10			
		4	2.70	10.80	3.95	9.95	E. W. Guy
do	*******************		44	83.70		83.70	J. T. McClure
do	6************	27.5	2.55	70.10		70.10	W. D. Brooks
do	************	28	2.55	71.40		71.40	J. T. McIntosh
do	******************	25.7	2.55	65.55		65.55	G. M. Whitaker
do	***************	23.2	2.55	59.40		59.40	J. L. King
do	******************	30.7	2.55	78.30		78.30	
						11.85	Travelers Ins. Co.
			\$2	027.25		2 027 25	

\$2.027.25 \$2,027.25

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Mechanical Department, Nashville, Tenn., during the month of January, 1914.

Stoppages— To Whom Due.

						I O WII	om Due		
		Natu		No.	Rate			Balance	Names of
	of	Employ	ment.	Days	Per D	ay Amt.	TICo	Paid.	Employees.
Jt.	Car	Inspt.	Frt	14.6	\$2.70				
				17	2.55	43.35		\$82.75	Ollie Wyman
	do	*******	*************	27.3	11	69.60			D. C. Booker
	do	*******	***************	. 24.1	2.70	65.05)		00.00	D. C. DOORCE
				3	2.55	7.65	\$2.60	70.10	J. P. Reed
				1	2.70	2.70	4	10.20	0. 1. 11004
	do	*****			2.55	72.15	2.65	72.20	Luther Rash
	do	*******	*************	15	2.70	40.50		12.20	Buther Itasia
				14.7	2.55	37.50		78.00	Geo. Gasser
	do	*******		27.7	2.55	70.65			Oliver Ray
	do		/***************		2.55	78.30			Dave Hale
Jt.	Car		Inspt. Fr		2.70	72.90			J. S. Felts
	do				2.70	83.70			R. L. Barnes
	do	*******		30	2.70	81.00			W. V. Bosworth
	do				44	82.90			Lewis Bickel
	do				2.45	76.70			Lee McCord
	do		************		2.70	6.20)			F. L. Gee
				25.3	2.45	62.00		00.20	r. L. dee
	do	******			2.45	65.40		75.60	Jas. Windrow
				4	2.50	10.20		10.00	Jas. Willulow
	do	********		-	2.70	10.80		74 50	Jno. Moon
				26	2.45	63.70		14.00	JIIO. MOOH
	do	********	**************	10	1.60	16.00		16.00	Chas. Murphy
	do				1.20	34.45			Kenneth Booker
Jt.	Car		rt		2.00	53.00			Alonzo Ketchum
-	do		***************************************		2.00	34.60			J. R. Spencer
	do				2.00	61.40			J. D. Anderson
	do				2.00	59.40			Henry Reed
	do				2.00	60.60			W. G. Watson
	do				2.55	7.65)		00.00	W. G. Watson
				16.7	2.00	33.40 (2.65	38 40	Hubert Neal
	do			15	2.55	38.25	2.00	00.10	Trabelt Iveal
				5.3	2.45	13.00	2.65	63.25	Ernest Moon
				6	2.00	12.00	2.00	00.20	Linest Moon
	do	*******	**************	26.9	2.55	68.60			
				1	2.45	2.45	2.00	72.05	Thos. Lazenby
				1.5	2.00	3.00	2.00		A HOS. AMECHOJ
	do	*******			2.55	79.80	2.65	77.15	Louis Little
	do				2.55	35.45)			
				16.8	2.00	33.60 (69.05	F. M. Phillips
	do	********			2.70	12.15		02.30	
				11.9	2.55	30.35		60.90	F. M. Gamble
				9.2	2.00	18.40		0	Gumbio
	do	********	909000000000000000000000000000000000000		2.55	40.80			
				9.7	2.45	23.75		74.55	Leslie Adams
		0		5	2.00	10.00			Auanis
					2.00	20.00		12.55	Travelers Ins. Co.
							_	-2.00	and tolers ins. Co.
					\$1	.924.45	3	1,924.45	
								-	

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Mechanical Department, Nashville, Tenn., during the month of January, 1914.

					oages—		
	Nature	No.	Rate		om Duc	Balance	e Names of
of	Employment.	Days		ay Amt.	TICo	Paid.	
Joint 4	Car Oiler		2.55	\$35.70)	-100	I tilu.	Employees.
do			2.00	34.60		\$70.20	Jas. Donovan
do			2.55	14.55	\$5.25		Dallas Reed
		12.6	2.00	25.70	φυ.2υ	34.00	Danas Reed
đo	****************		2.00	4.60		4.60	Erwin Junnigan
do	***************************************		2.00	14.60		14.60	Thos. Brummett
do			2.00	2.55)		11.00	rnos. Brummett
		7	2.00	14.00		16.55	Luther Taylor
do	***************************************	7.4	2.00	14.80		14.80	Jurome Taylor
do	*****************	22.4	2.00	44.80			Wm. P. Mitchell
do	***************************************	22.3	2.00	44.60			J. L. Simpkins
do	************************	1	2.00	2.00		2.00	Jas. Brudett
· do	*******************	5	1.60	.80)		2.00	sas. Brauett
		3.6	2.00	7.20		8 00	Ridley Burnett
Speed	Recorder Man	12.1	2.55	30.85		30.85	Jerry Webb
do	****************	31	2.00	62.00		62.00	W. O. Hartman
Jt. Chie	ef Car Inspt. Pas	26.7	3.10	82.75			Eugene Griggs
do	******************	31.3	3.10	97.05		97.05	G. W. Toney
Jt. Car	r Inspt. Pass	29.7	2.70	80.20			J. C. Wilson
do	*****************		2.70	84.50			G. K. Terhune
do	********************	25.3	2.70	68.30			Jacob O'Sail
do	AU	29.7	2.70	80.20			C. B. Buchanan
Jt. Air	Bk. Inspt. Pass	4	3.10	12.40)			c. B. Buchanan
do	********************	27	2.90	78.30 (90.70	W. A. Edwards
do	****************	30.7	2.90	89.05		89.05	J. D. Sullivan
do	*****************	27.3	2.90	79.15		79.15	Tim Nenon
do	*****************	9	3.00	27.00		27.00	Cal Brannon
do	***************	4	2.10	11.60)			
		26.7	2.55	68.10		79.70	J. F. Johnson
do	***************	4	2.90	11.60)			
		27.3	2.55	69.60		81.20	H. M. Johnson
do	********************	31.5	2.55	80.30		80.30	Ben Barnes
do	******************		2.55	82.10		82.10	Arthur Hatfield
Jt. Car	Oiler, Pass	31.3	2.00	62.60		62.60	Jas. Welch
do	***************	26.5	2.00	53.00		53.00	Martin Cunniff
do	***************	29.7	2.00	59.40		59.40	R. L. Brannon
						5.25	Travelers Ins. Co.
			\$1,	630.05	\$1	,630.05	

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Mechanical Department, Nashville, Tenn., during the month of January, 1914.

Stoppages-	
To Whom Due	

			To Wh	om Due		
Nature of Employment.	No. Days	Rate Per Day	Amt.	MJS	Balance Paid.	Names of Employees.
Jt. Car Oiler, Pass	.31 .30 .31.3 .29.9 .25.3	1.60 1.50 1.35	62.00 48.00 50.10 44.85 34.15	3.90	48.00 50.10 44.85 30.75	Alvin Price Geo. Edwards Chas. Carroll Felix Tippett John Hatton M. J. Smith

\$239.10 \$239.1

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Mechanical Department, Nashville, Tenn., during the month of January, 1914.

Stoppages-

		7	o Wh	om Due	١.	
Nature of Employment.	No. Rate Days Per Day				Balance Paid.	Names of Employees.
Chief Engineer	Mo. @ 31 \$52.50 Mo. 52.50	\$107.50 77.50 50.80 52.50 52.50	\$5.57		77.50 50.80 46.70	Chas. Peden W. R. Quinn E. H. Yates Thos. Hardner John Battle
Boiler Washerdo	26.5 1.60 31 1.25	42.40 38.75 35.00	25.90		42.40 38.75	Sam Dillehunty Clabe Farmer Mickel Lynch
dodo	30.5 " 29.5 "	7.50 38.10 36.85	10.15	\$7.50	0.00 38.10 26.70	Lack Norman Frank Rhodes Jas. Mason
dodo	30.5	39.35 38.10 38.10			38.10 38.10	Mickel Harrison Jas. Hayes Chas. Christman
dodo do Electrician	1.5 " 19.5 "	39.25 1.85 24.35 77.00	5.00 12.60		1.85 12.60	Joe Sawyer Jas Marshall Clabe Kinnard
do do Electrician, Laborer	.27 " .31 1.80	75.60 55.80 2.50			75.60 55.80	H. L. Barr, dis. J. K. Peoples J. M. Elizer Ephraine Hill, pd.
do	13 1.25 24.5 "	16.25 30.60 10.00	7.90 10.10		8.35 20.50	Wm. Leach, dis. Ephraine Hill Jas. E. Crandall, dis.
					77.10	M. J. Smith J. T. Flynn

\$988.15

\$988.15

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Engineers, Nashville, Tenn., during the month of January, 1914.

of	Nature Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Yard H	Engineer	2.6	\$4.50	\$11.70)		
		26	4.20	110.50	\$122.20 S	H. Adams
do	****************	2.614	4.50	11.90	¥ 5.	11. Adams
		26	4.25	110.50	122.40 M	. C. Anderson
do	************	2.314	4.50	10.55	222.10 212	. C. Anderson
		19	4.25	80.75	90 30 J	H. Andrews
do	***************	9%	4.50	4.40)		ii. Andrews
		10.3	4.25	43.75	48 15 T	E. Baker
do	*****************		4.50	10.35	10.10 1.	E. Daker
		20.7	4.25	87.95	98 30 H	B. Benson
do	****************	1.5	4.50	6.75)	20.00 11.	D. Denson
		15	4.25	63.75	70.50 Io	hn Corbett
do	*************	334	4.50	13.85		an Corbett
		29	4.25	123.25	137 10 E	T. Dumont
do	94 90 90 40 40 40 90 90 90 90 90 90 90	3.8	4.50	17.10	201.10 13.	1. Dumont
		29	4.25	123.25	140.35 B	T. Dickens
do	*************	1	4.50	45)	-10.00 13,	1. Dickens
		2	4.25	8.50	8 95 T	O. Dillingham
do	**************	3	4.50	13.50	0.00 3,	O. Dillingnam
		30	4.25	127.50	141 00 1.	A. Enoch
do	***************	21/6	4.50	9.10	111.00 13.	A. Enoch
		19	4.25	80.75 (89.85 C	T. Fulghum
do	*******************	1	5.00	5.00	00.00 ().	1. ruignum
		3.7	4.50	16.65	136 40 Ce	eo. Fricke
		27	4.25	114.75	100.10 (16	o. Fricke
do	****************		4.50	7.65		
		17	4.25	72.25	79.90 A	H. Fricke
do	*****************		4.50	15.50)	10.30 A.	II. FTICKE
-	***************************************	31	4.25	131.74 (147 95 T	L. Greer
do	***************************************		4.50	8.10)	411.20 1.	L. Greer
	***************************************	15	4.25	63.75	71 95 387	m. Greer
do	*****************		4.50	12.05	11.00 W	m. Greer
		26	4.25	110.50	199 55 T	H. Gallimore
do	***************************************		4.50		122.00 1.	H. Gallimore
-	***************************************	22.3	4.25	11.35	106 10 9	H. Hewitt
do			4.70	94.75	145.70 W	H. Hewitt
do	*******************		4.50	145.70	110.10 W	. B. Hill
40	****************	29.3	4.25	15.65	140.15 (1	
do	***************			124.50 (140.15 C.	J. Harrison
40	****************	7	4.50 4.25	3.05	39 90 Y	337 37
do	******************			29.75 (02.00 J.	W. Hamilton
40	000000000000000000000000000000000000000	31.3	4.50 4.25	16.75)	149 75 7-	h- 77 .
do	****************			133.00 (149.15 30	hn Hanley
40	***************************************	25	4.50	15.05 }	191 20 0	
do	***************************************		4.25	106.25	121.30 C.	A. Hewitt
. 40	*****************	25.7	4.50	11.70	100.00 ***	
do	400m0000000000000000000000000000000000		4.25	109.20 {	120.90 W	. B. Horn
40	000000000000000000000000000000000000000	25	4.50	12.80	110 05 2	** **
do			4.25	106.25	119.05 J.	F. Harvey
uo	*****************		4.50	25.30)	144.00	
do		28	4.25	119.00 \$	144.30 W	W. Johnson
do	**************		4.50	9.45)		
do		20.3	4.25	86.25	95.70 J.	M. Johnson
ao	***************		4.50	15.75)		
		31.3	4.25	133.00 (148.75 H.	O. Johnson
		22.3	4.25	94.75		
do	*****************	2.3	4.50	10.35	105.10 J.	T. Lancaster

		-		
			\$3,342.95	140.90 A. J. Lester
do	3.91/2	4.50	17.65)	
	29	4.25	123.25	144.40 J. T. Lynch
do	4.7	4.50	21.15	
	29	4.25	123.25	\$3,342.95
			,	

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Engineers, Nashville, Tenn., during the month of January, 1914.

Nature	No.	Rate		Balance	Names of
of Employme		Per Day	Amt.	Paid.	Employees.
Yard Engineer	2.3%	4.50	\$10.70 }		
	26	4.25	110.50	\$121.20 TI	hos. Mulloy
do	3.1	4.50	13.95		
	30.7	4.25	130.45	144.40 J.	C. Moran
do	4.3	4.50	19.35		
	31	4.25	131.75	151.10 G.	W. McCormack
do	2.71/2	4.50	12.35)		
	19	4.25	80.75 (93.10 B.	F. Manning
do	18	4.25	76.50)		
	1.8	4.50	18.10	84.60 J.	J. Mitchell
do	2.3	4.50	10.35)		
	23	4.25	97.75	108.10 T.	W. Nall
do	2.6	4.50	11.70)		
	26	4.25	110.50 (122.20 M	ike Nenon
do	2.3	4.50	12.60)		
	27.7	4.25	117.70 (130.30 Le	e Northern
do	1	4.50	.45)		
	1	4.25	4.25 (4.70 S.	B. Oakley
do	2.4	4.50	10.80)		
	23	4.25	97.75	108.55 J.	H. Peebles
do	2.8	4.50	12.60		
	27.7	4.25	117.70 (130.30 J.	J. Parrish
do	3.7%	4.50	17.00)		
	29	4.25	123.25	140.25 T.	E. Phipps
do		4.50	13.50)		
	29.7	4.25	126.20 (139.70 Vi	ncent Rich
do	2.8%	4.50	12.95)		
	24	4.25	102.00 \$	114.95 J.	O. Rupoke.
do		4.25	4.25	4.25 R.	E. Riggan
do	2.91/4	4.50	13.15)	*****	
	24	4.25	102.00	115.15 J.	D. Sevate
do	2.91/2	4.50	13.25)	****	
	29	4.25	123.25	136.50 M.	J. Sisk
do		4.50	12.15)	*****	
	27	4.25	114.75	126.90 Jas	. Sharp
do	1.5%	4.50	7.10 /	F0 10	
	12	4.25	51.00	58.10 F.	O. Simpson
do	3.51/4	4.50	15.85)	4.40.00	
	31.3	4.25	133.00 (148.85 Pit	t Stiles
do	3.234	4.50	14.75)	100 00	
	29	4.25	123.25 (138.00 W.	A. Stephenson
do	3%	4.50	13.85)	100.00 -	
	27	4.25	114.75	128.60 J.	N. Spencer
do	2.8	4.50	12.60)	100.00 -	
	27.7	4.25	117.70 \$	130.30 Jas	. Sadler

CITY OF NASHVILI	LE, ET AL.,	V. L.	& N.	R. B	. CO.,	ET AL.	363

do		4.50	3.60)	
	8	4.25	34.00 (37.60 J. H. Sirley, dis.
do	3.1	4.50	13.95	or.oo s. H. Siriey, dis.
	31.3	4.25	133.00 (146.95 R. S. Templeton
do	3.1	4.50	13.95	140.55 R. S. Templeton
	30	4.25	127.50	141.45 W. R. Trigg
do	1.5 1/2	4.50	6.95	141.40 W. It. I FIRE
	11	4.25	46.75	52 70 T D W
do		4.50	4.50	53.70 J. D. Weatherly
	10.3	4.25	43.75	49 95 C T WILL
do	1.2	4.50	5.40 /	48.25 C. T. Wilcox, dis
	11	4.25	46.75	59 15 C m www
do		4.50	1.35	52.15 C. T. Wilcox
	3	4.25	12.75	14.10 W. L. Weonr
		_	\$3,074.30	\$3 074 30

\$3,074.30 \$3

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Engineers and Firemen, Nashville, Tenn., during the month of January, 1914.

of H	Nature Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Yard En	gineer	3.1	\$4.50	\$13.95)		Employees.
** * ***		25.4	4.25	107.95	\$191 00 EF	G. Yeargin
Yard Fire	emen		2.50	5.00)	\$121.50 H.	G. Yeargin
		20	2.34	46.80 (51 80 P	W. Andrews
do	*****************		2.50	3.75)	01.00 R.	w. Andrews
		15	2.34	35.10	38 95 M	G. Ashburn
do	***************************************	1.6%	2.50	4.20)	00.00 AL	G. Ashburn
		14	2.34	32.75	36 95 W	E. Abbott
do	****************		2.34	2.35	9 35 N	W. Brown
do	*****************	7%	2.50	1.95)	2.00 14.	W. Brown
4		7.3	2.34	17.10	19.05 D	G. Benson
do	**************	2.4	2.50	6.00)	40.00 It.	G. Denson
		24.3	2.34	56.85	62 85 T	F. Brown
do	****************	3.634	2.60	9.20 /	02.00 3.	r. Brown
3		28	2.34	65.50 (74.70 W	m. Bruce
do	****************		2.50	5.76)	11.10 44	m. Bruce
		23	2.34 .	53.80	59 55 W	J. Barnes
do	************		2.50	2.50 /	00.00 11	J. Barnes
4.		8.7	2.34	20.35	99 85 €	J. Crotzer
do	***************************************	2.51/4	2.50	6.30)	ww.00 S.	J. Crotzer
4.		17	2.34	39.80 (46 10 H	M. Childress
do	****************		2.50	6.85	10,10 11.	M. Childress
		27.4	2.34	64.10 (70.95 AL	onzo Cook
do	*****************		2.50	7.50	10.50 211	ouro Cook
۵.		29.7	2.34	69.50 (77.00 T	T. Cuddy
do	***************		2.50	4.60)	11.00 3,	1. Cuddy
		16.7	2.34	39.10	43.70 Io	e Colman
.do	**************		2.50	6.25)	10.10 30	Colman
3.		22.3	2.34	52.20 (58.45 C	P. Coggins
do	*****	4.11/2	2.50	10.35	00.40 €.	r. Coggins
4.		30	2.34	70.20	80.55 T	W ()
do	********		2.50	1.30	00.00 3.	M. Cunningham
A-		6	2.34	14.05	15.35 D	C. Crocker
do	****************		2.50	3.25	40.00 R.	C. Crocker
	_	13	2.34	30.40	33 65 C	M. Clements
	•			,	00.00 C.	M. Clements

do	3.51/4	2.50	8.80 }	
	26	2.34	60.85	69.65 J. C. Dillinghan
do	3.1	2.50	7.75	
	30.7	2.34	71.85	79.60 C. P. Donoran
do	3.1%	2.50	7.95	
	28	2.34	65.60	73.45 J. B. Davy
do	1.5%	2.50	3.95	
	16	2.34	37.45	41.40 Jas. Fahey
do	4.114	2.50	10.30	
	31.3	2.34	73.25	83.55 J. M. Fowler
do	3.2	2.50	8.00)	
40	27	2.34	63.20	71.20 C. T. Ferguson
do	1.2	2.50	3.00	t.
40	8	2.34	18.70	21.70 S. P. Dibson
do	6	2.50	1.50	21.10 5. 1. 2.000
uu	6	2.34	14.05	15.55 Wm. Greer
do	3.2%	2.50	8.20	10.00 Will. Greek
uo	29	2.34	67.85	76.05 R. S. Hill
do	3.24	2.50	8.05	10.00 It. S. IIII
ao	29.3	2.34	68.55	76.60 O. N. Hessey
4-	9.9	2.50	8.25	10.00 O. N. Hessey
do		2.34	65.50	73.75 F. C. Hanes
	28			13.15 F. C. Flanes
do		2.50	2.10	00 00 MI TO H
	8	2.34	18.70 \$	20.80 W. E. Hessey
			\$1,619.90	\$1,619.90

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran.

W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Firemen, Nashville, Tenn., during the month of January, 1914.

1914.						
	Nature	No.	Rate		Balance	Names of
of E	mployment.	Days	Per Day	Amt.	Paid.	Employees.
Yard Fire	men	1.314	\$2.50	\$3.35)		
		9	2.34	21.05 (\$24.40 R	W. Hamilton
do	¥07500000000000000000000000000000000000	9	2.50	2.25)		
		9	2.34	21.05	23.30 J.	W. Hamilton
do	***************************************	4.734	2.50	11.80)		
		23	2.34	53.80 (65.60 C.	R. Johnson
do	*******************************	1.5	2.50	2.75)		
		13.3	2.34	31.10 (34.85 J.	E. Johnson
do	***************************************	2.8	2.50	7.00 7		
		28	2.34	65.50	72.50 H	. P. Kirkpatrick
do	********************	3.1	2.50	7.75)		
		30.7	2.34	71.85 (79.60 J.	B. Kennon
do	***************************************	2.7	2.50	6.75)		
		16.7	2.34	39.05	45.80 W	. J. Lawrence
do	*****************	3.1	2.50	7.75)		
		30.7	2.34	71.85 (79.60 J.	C. Landry
do	***********************	3.4%	2.50	8.70)		•
		29	2.34	67.85 (76.55 W	. H. Mamby
do	000000000000000000000000000000000000000	3.11/2	2.50	7.85		
		24	2.34	56.15	64.00 J.	O. McKnight
do "	######################################	3.3	2.50	8.25)		
		27	2.34	63.20	71.45 M	. A. McCabe
do	*******************	1.3	2.50	3.25		
		12	2.34	28.10	31.35 T.	P. Mangrum

	-			
10	2.34	23.40	25.90	F. O. Simpson
			02.00	
4				
			63.35	W. W. Smith
-			00	
			65.35	W. F. Seay
	2.50	6.85 (
			80.90	H. S. Shufield
	2.50	10.70		
19.3	2.34	45.15	49.90	W. F. Seigeuthaler
1.9	2.50	4.75		
17	2.34	39.80	44.05	J. C. Russell
1.7	2.50	4.25		
15	2.34	35.10	39.05	H. A. Rank
1.5%	2.50	3.95)		
9	2.34	21.05	23.05	R. M. Russell
	2.50	2.00		4
12	2.34	28.10	31.85	F. R. Quinlan
1.5	2.50	3.75		,
16	2.34	37.45	41.80	H. E. Pyburn
1.71/2	2.50	4.35		
12.3	2.34	28.80	32.05	B. H. Peach
1.3	2.50	3.25	. 5.00	
27.7	2.34	64.80	72.65	C. J. Pike
3.11/4	2.50	7.85		z. c. c connor
9	2.34	21.05 (23.60	S. J. O'Connor
1.01/4	2.50	2.55	00.00	J. D. OHRIO
27	2.34	63.20	69.20	S. B. Oakley
2.4	2.50	6.00	******	z. c. mitchen
18	2.34	42.10	46.8	E. J. Mitchell
1.9	2.50	4.75	24.00	iv. D. mckay
9			24 0	W. B. McKay
1.2		, ,	41.20	J. J. McDonard
18.3			47.2	E. J. McDonald
1.7%	2.50	4.45	**.0	
29.3				5 T. J. May
	1.7% 18.3 1.2 9 1.9 18 2.4 27 1.0¼ 9 3.1½ 27.7 1.3 12.3 1.7½ 16 1.5 12 8 9 1.5% 15 17 19 19.3 4.2% 30 2.7½ 25 1 1 2.7½ 23	29.3 2.34 1.7% 2.50 18.3 2.34 1.2 2.50 9 2.34 1.9 2.50 18 2.34 2.4 2.50 27 2.34 2.50 9 2.34 3.1½ 2.50 9 2.34 3.1½ 2.50 1.3 2.34 1.7 2.50 1.3 2.34 1.5 2.50 1.5 2.50 1.5 2.34 1.5 2.50 1.7 2.34 1.7 2.50 1.7 2.34 1.9 2.50 1.9 2.34 2.77 2.34 2.50 30 2.34 2.77 2.34 1.9 2.50 19.3 2.34 4.2% 2.50 30 2.34 2.7½ 2.50 30 2.34 2.7½ 2.50 25 2.34 1 2.75 2.7½ 2.50 23 2.34 1 2.75 2.7½ 2.50 23 2.34	29.3 2.34 68.55 1.7 \(\) 2.50 4.45 18.3 2.34 42.80 1.2 2.50 3.00 9 2.34 21.05 1.9 2.50 4.75 18 2.34 42.10 2.4 2.50 6.00 27 2.34 63.20 1.0 \(\) 2.50 2.55 9 2.34 21.05 3.1 \(\) 2.50 7.85 2.7 2.34 64.80 1.3 2.50 7.85 2.7 2.34 64.80 1.3 2.50 3.25 12.3 2.34 28.80 1.7 \(\) 2.50 4.35 16 2.34 37.45 1.5 2.50 3.75 12 2.34 28.10 8 2.50 2.00 9 2.34 21.05 1.5 2.50 3.75 12 2.34 28.10 1.5 2.50 3.95 1.5 2.34 35.10 1.7 2.50 4.25 1.5 2.34 35.10 1.7 2.50 4.25 1.9 2.34 39.80 1.9 2.50 4.75 19.3 2.34 45.15 4.2 \(\) 4.2 \(\) 2.50 30 2.34 70.20 2.7 \(\) 2.50 6.85 25 2.34 58.50 21 2.7 \(\) 2.50 6.80 23 2.34 53.80 1 2.50 2.50	29.3

\$1,527.40 \$1,527.40

CORRECT:

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran. W. P. Bruce, Superintendent.

We, the undersigned, do acknowledge to have received from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway the sum herein set opposite our names, respectively, in full payment of our services for the time specified while employed by the Nashville Terminals, on duties relating to Yard Firemen, Nashville, Tenn., during the month of January, 1914.

of :	Nature Employment.	No. Days	Rate Per Day	Amt.	Balance Paid.	Names of Employees.
Yard Fir	emen	1.2%	\$2.50	\$3.20)		
		7	2.34	16.40	\$19.60 J.	J. Scivally
do	*****************	2%	2.50	.70)		
		3	2.34	7.00 (7.70 J.	J. Stephens
do	****************	2.21/2	2.50	7.10)		
		28	2.36	65.50 (72.60 E.	C. Thompson
do	***************	1.4	2.50	3.50)		
		13	2.34	30.40 (33.90 J.	W. Tant
do	****************	3.2	2.50	8.00)		
		28.7	2.34	67.15	75.15 A.	T. Thrailkill
do	*****************	3.2%	2.50	8.20		
		30.7	2.34	71.85	80.05 V.	C. Trigg

366 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET Al	& N. R. R. CO., ET A	N. P	de l	La.	V .	ALina	EL	F NASHVILLE.	CITI OF	000
--	----------------------	------	------	-----	-----	-------	----	--------------	---------	-----

			\$495.20	\$495.20	
	14	2.34	32.75 \$	36.50 W. L. Weaver	rer
do		2.50	3.75)		
	24	2.34	56.15	62.65 Frank Wade	
do	2.6	2.50	6.50)		
	14	2.34	32.75	35.80 H. W. Wood	
do	1.21/4	2.50	3.05)		
	5	2.34	11.70	13.30 L. C. White	r.
do		2.50	1.60		
	22.3	2.34	52.20	57.95 Henry Willoughby	ughby
do	2.3	2.50	5.75)		

CORRECT:

E

APPROVED:

Chas. W. Trigg, Timekeeper. R. Moran.

W. P. Bruce, Superintendent.

COMPLAINANTS' CROSS EXHIBIT No. 6.

STATEMENT No. 6 FILED IN ANSWER TO INTERROGATORY No. 86.

THROUGH CARS RECEIVED THROUGH CARS FORWARDED

In L.&N. Trains	In N.&C. Trains	Total as per Exhibit No. 2.	Month	In L.&N. Trains		Total as per Exhi't No. 2.
12021	4706	16727	August	11215	5548	16763
11966	4503	16469	September	11109	5302	16411
13723	4936	18659	October	12446	6240	18686
13479	4932	18411	November	12306	5978	18284
12022	4136	16158	December	10995	5235	16230
12411	4472	16883	January	11159	5804	16963
75622	27685	103307	Total	69230	34107	103337

Statement does not include cars arriving via L. & N. and N., C. & St. L. for forwarding via T. C. and vice versa. Our Exhibit No. 2.

RECAPITULATION.

	L. & N.	N. & C.	Total
Inbound	75622	27685	103307
Outbound	69230	34107	103337
Total	144852	61792	000044
10(A)	199004	01/92	206644

COMPLAINANTS' CROSS EXHIBIT No. 7.

STATEMENT No. 7 FILED IN ANSWER TO INTERROGATORY No. 92.

LOUISVILLE & NASHVILLE RAILROAD.

ingine N	umber Estin	nated Present Value
334	***************************************	\$5,000.00
346	***************************************	5,000.00
347	***************************************	5.000.00
411	***************************************	5,000.00
507	***************************************	6,000.00
510	***************************************	7,000.00
514	***************************************	7,000.00
527	***************************************	7,000.00
537	***************************************	7,000.00
541	***************************************	7,000.00
543		7,000.00

		,
622	***************************************	8,000.00
626	004120111101110111111111111111111111111	8,000.00
629	######################################	8,000.00
643	8264000000000000000000000000000000000000	
645	***************************************	8,000.00
769		8,000.00
999	000000000000000000000000000000000000000	10,000.00
2012	***************************************	10,000.00
2020	407040070090120800404004000000000000000000000000000	5,000.00
2058	48+499000020144999000449+01210000000000000000000000000000000000	5,000.00
2067	00000000000000000000000000000000000000	10,000.00
2001	00000000000000000000000000000000000000	10,000.00
6	SHVILLE, CHATTANOOGA & ST. LO	\$4,991.00
16	TO 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	4.991.00
25	.00078040405000444600846800000000000000000000	6,037.50
26	**************************************	6,037,50
87	A-1179042898000000000000000000000000000000000	6,440.00
123	**************************************	7,228.90
127	##40##################################	7.228.90
140	#00x0#000###:::000000000000000000000000	6,963.25
141	*450040*0*2*00*0000000000000000000000000	6.963.25
142	\$6000\$\text{\$0.000}\text{\$0.0000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.00000}\text{\$0.000000}\text{\$0.000000}\text{\$0.000000}\text{\$0.000000}\text{\$0.0000000}\text{\$0.00000000}\$0.00000000000000000000000000000000000	6,963.25
146	***************************************	6.951.24
152	######################################	11,191.35
304	**************************************	6.842.00
305	000000000000000000000000000000000000000	6.842.00
306	400470000000000000000000000000000000000	
315	***************************************	6,842.00
		6.963.25

COMPLAINANTS' CROSS EXHIBIT No. 8.

STATEMENT No. 8, SHEET No. 1, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY ROLLS FOR THE MONTH OF FEBRUARY, 1913.

Union St.	ndent's Office\$	1,210.00
do do		1,786.65
do	***************************************	777.10
	1 D 1	654.35
Varienter	s and Painters	1,294.20
do do	Crossing Watchmen	711.40
Operators	and Signalmon	591.75
do	and Signalmen	1,441.10
do	***************************************	1,875.75
	des C-U	469.10
do do	ks, Callers and Messengers	1,478.40
	***************************************	664.45
do	***************************************	1,200.05
		138.75
Hordore	ers and Assistants	2,085.00
Vond For	nd Switch Tenders	496.05
do	emen and Switchmen	3,169.85
do	***************************************	2,852,50
	***************************************	1.980.65
Switchmen		1.909.75
do	***************************************	1.846.20
do	***************************************	1.612.75
do		2,305.45
qo		1,943.90
do		2.095.45
do		1.836.45
en co		

	epartment	830.85
do	000000000000000000000000000000000000000	380.25
do	***************************************	436.20
do	***************************************	188.25
do	***************************************	585.10
do	***************************************	492.75
do	\$70000000000000000000000000000000000000	459.95
do	***************************************	491.10
do	***************************************	576.85
do	400000000000000000000000000000000000000	476.00
do	***************************************	369.35
do	487000000000000000000000000000000000000	280.35
Signal,	Air Switch Inspectors and Porters	1.061.55
Car Insp	pectors and Oilers	1.888.10
do	000000000000000000000000000000000000000	1.146.70
do	***************************************	1,638.90
do	0	626.55
Electrica	l Engineers and Firemen, Union Station	865.70
Yard En	gineers and Firemen	3.198.55
do	***************************************	3,659.20
do	**************************************	1,523,20
do	***************************************	1,395,35
do	01	1,371.10
do	***************************************	635.35
-		000.00
T	otal	64.171.9

STATEMENT No. 8, SHEET No. 2, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF MARCH, 1913.

		1,210.00
Union Sta	ation	1,782.45
do	600000000000000000000000000000000000000	816.25
do	******	761.20
Carpenter	s and Painters	1,435.10
do	***************************************	716.00
Yard and		584.00
Operators	and Signalmen	1,356.95
do		1,762.90
do	***************************************	646.65
Vard Cler	ks, Callers and Messengers	1.535.60
do	The state of the s	840.20
do	***************************************	960.25
do		124.00
	ters and Assistants.	
	and Switch Tenders	1,957.10
		500.00
	emen and Switchmen	2,781.25
do	***************************************	2.882.30
do	***************************************	2,084.15
Switchmer	n	1,563.25
do	***************************************	2,049.85
do	***************************************	1,459.05
do	•	2.012.85
do	***************************************	1,781.50
do	000000000000000000000000000000000000000	1,740.35
do	***************************************	2.064.00
do	***************************************	1.555.65
do	8894	536.90
Road Dep	artment	955.75
do	***************************************	428.45
đo		455.30
do	***************************************	673.10
do	**************************************	678.40
do		507.40
uo	***************************************	007.40

	OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AI	L. c
do		
do	\$61***\$0\$00*****************************	59
do	************************************	52
do	######################################	47
do	\$005\$\$1444000000000000000000000000000000	37
	in Switch Inspectors and Destart	28
	ectors and Oilers	1,13
do		2,13
do	***************************************	1,75
do		1,36
ectricia	ans, Engineers and Firemen, Union Station	57- 88:
do	gineers and Firemen	2,77
do		3,55
do	***************************************	2,02
do	\$0000000000000000000000000000000000000	1,44
do	*************************************	1,26
uo		52
To	tal	64 89
perint	THE PAY-ROLLS FOR THE MONTH OF APRIL, 1913.	1,23
do	######################################	84
do		76
rpente	'S	1,19
inters	***************************************	53
rd Wa	tchmen	70
ossing	Watchmen	72
erators	and Signalmen	1.71
do	1000-1200-1000-1000-1000-1000-1000-1000	1,54
do	***************************************	490
	rks, Callers and Messengers	1,592
do	011135000000000000000000000000000000000	1,12
do	demonstration of Application of the state of	697
rd Ma	sters and Assistants	1,957
rders	and Switch Tenders	500
do	emen and Switchmen	2,680
do		2,621
itchme	***************************************	2,569
do	- 10 日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日	1,811
do	***************************************	2,196
uu		1,739
do	***************************************	2,180
do		1,754
do	***************************************	
do		1,884
do do		1,884 1,914
do do do		1,884 1,914 458
do do do do ad Dej	partment	1,884 1,914 458 383
do do do do ad Dej do	artment	1,884 1,914 458 383 182
do do do do ad Dej do do	artment	1,884 1,914 458 383 182 627
do do do ad Dej do do do	partment	1,884 1,914 458 383 182 627 692
do do do ad Dej do do do do	partment	1,884 1,914 458 383 182 627 692 569
do do do ad Dej do do do do	partment	1,884 1,914 458 383 182 627 692 569 523
do do do ad Dej do do do do do	partment	1,884 1,914 458 383 182 627 692 569 523 467
do do do do do do do do do do	partment	1,884 1,914 458 383 182 627 692 569 523 467 501
do d	artment	1,884 1,914 458 383 182 627 692 569 523 467 501 553
do do do ad Dej do do do do do do do	artment	1,884 1,914 458 383 182 627 692 569 523 467 501 553 383
do d	r Switch Inspectors and Porters	1,884 1,914 458 383 182 627 692 569 523 467 501 553 383 1,131
do d	r Switch Inspectors and Porters	1,884 1,914 458 383 182 627 692 569 523 467 501 553 383 1,131 1,936
do d	r Switch Inspectors and Porters	1,884 1,914 458 383 182 627 692 569 523 467 501 553 383 1,131

370 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AL.

do	gineers and Firemen	3,326.65 3,161.60
do	***************************************	1,743.60
do		1,286.95
do	***************************************	1,325.90
do	40610046421140006533340009999999	500.60

STATEMENT No. 8, SHEET No. 4, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF MAY, 1913.

_	MAY, 1913.	
	endent's Office\$	1,235.00
Union S	tation	1,791.80
do	***************************************	743.05
do	***************************************	716.85
do	***************************************	261.25
Carpente	***	1,391.55
Painters	***************************************	637.30
Yard Wa	aichmen	700.00
	Watchmen	666.00
	s and Signalmen	1,281.65
do	***************************************	1,927.10
do	410194104104104104104104104104104104104104104	547.05
	erks, Messengers, Callers, etc	1,507.30
do	messengers, conters, eco	1,202.35
do	***************************************	601.05
	ters and Assistants	
	and Switch Tenders	1,945.00
	remen and Switchmen	500.00
		2,829.90
do	***************************************	2,564.70
do	***************************************	2,390,30
do	***************************************	325.30
Switchm		1,877.60
do	***************************************	2,334.25
do	***************************************	1,754.70
do	***************************************	2,200.15
do	***************************************	2,136.20
do	***************************************	2,160,40
do	***************************************	2,089.80
do	***************************************	994.80
Road De	partment	904.90
do	***************************************	133.45
do	***************************************	262,80
do	411111111111111111111111111111111111111	567.00
do	***************************************	448,20
do	***************************************	580,65
do	***************************************	775.15
do	***************************************	415.90
do		591.60
do	***************************************	592.55
do	•	354.35
	nd Air Switch Inspectors and Porters	1,140.25
	ectors and Oilers	2.031.05
do	Citis and Ories	1.813.70
do		1,499.45
do		345.85
Electricis	ans, Engineers and Firemen, Union Station	769.05
	gineers and Firemen	3.098.90
do		3.221.75
do		2.096.35
do		1,403.00
do		1,500.15
do		485.G5
do	***************************************	100.00
Т	\tal\$6	6,343.50

STATEMENT No. 8, SHEET No. 5, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF JUNE, 1913.

Superint	endent's Office	1,235.0
Onion S	tation	1,839.4
do	0:0000000000000000000000000000000000000	772.6
do	***************************************	827.5
Carpente		1,491.7
Painters	- 1 - L	644.6
Yard W	atchmen	700.0
Crossing	watchmen	642.5
Operator	s and Signalmen	1,814.9
do	***************************************	1,308.7
do	400441444000000000000000000000000000000	700.6
Yard Cle	erks, Callers, Messengers, etc	1.487.2
do		
do	***************************************	1,136.2
do	***************************************	693.1
Yard Ma	sters and Assistants	120.0
Herders	and Switch Tenders	1,945.0
Yard Fo	remen and Switchmen	497.7
do	remen and Switchmen	2,245.7
do	***************************************	2,372.4
Switchm		1,997.5
		1,654.7
do	***************************************	1.765.9
do		2.036.4
do	THE RESIDENCE OF THE PROPERTY OF THE PARTY O	1,968.8
do	14.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.	1,716.7
do		1,656.2
do		
do		1,619.6
Road De	partment	453.1
do	1.0	923.8
do		169.7
do		295.0
do		507.2
do	manner and the second s	400.2
do		484.6
		18.4
do		708.4
do	***************************************	332.1
do	***************************************	533.3
do		367.8
do		306.5
lignal ar	nd Air Switch Inspectors and Porters	1,106.7
ar Insp	optors and Oilens	
do		1.878.9
do		1,476.3
do		1,507.2
	ns, Engineers and Firemen, Union Station	635.9
ard Fra	shoors and Firemen, Union Station	759.8
do do	rineers and Firemen	3,001.6
	***************************************	2,920.3
do	***************************************	1,703.9
do		1,483.1
do	***************************************	606.1
		000.10

STATEMENT No. 8, SHEET No. 6, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF

Superinte	endent's Office	1,235.0
Union S	tation	1,704.6
do	430500000000000000000000000000000000000	775.4
do	***************************************	791.2
do	499000000000000000000000000000000000000	210.0
Carpenter		1,542.6
Painters	0.0000000000000000000000000000000000000	1,146.2
	atchmen	700.0
Crossing	Watchmen	657.2
	and Signalmen	
do		1,232.1
	***************************************	1,660.2
do		852.0
rard Cle	rks, Callers, Messengers, etc	1,564.1
do	\$	1,160.8
do	***************************************	826.5
do	***************************************	124.0
Yard Mas	sters and Assistants	1,943.0
Herders	and Switch Tenders	500.0
Yard For	emen and Switchmen	2,741.5
do	***************************************	2,292.5
do	***************************************	1,365.4
Switchme		1,625.3
do	***************************************	1,630.5
do	***************************************	1,892.0
do		
	***************************************	1,940.6
do	***************************************	1,590.6
do	***************************************	1,622.0
do	***************************************	1,180.1
	partment	938.2
do	***************************************	306.0
do	***************************************	391.60
do	***************************************	467.48
do	***************************************	475.90
do		576.35
do		684.20
do		41.90
do		387.98
do	***************************************	566.48
do	***************************************	358.9
do		
	A Al- Codish Townston and Dodge	375.00
	d Air Switch Inspectors and Porters	1,141.6
		1,693.50
do	***************************************	1,830.40
do		1,636.98
do	***************************************	529.80
Electricia	ns, Engineers, Union Station, etc	748.3
Yard Ens	gineers and Firemen	3,061.1
do		2,665.6
do		1.574.5
do	***************************************	1,403.1
do		106.80
uo	***************************************	100.01
To	otal	8,468.2
TATEM	ENT No. 8, SHEET No. 7, FILED IN ANSWER TO	INTER
	OGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF	
	AUGUST, 1913.	
Superinte	ndent's Office	1,235.00
		1,779.58
Jnion St.	alion	41110.00

· do	***************************************	876.85
do	0.0000000000000000000000000000000000000	75.00
Carpent	ers	1,595.20
Painters		1,033.80
Yard W	atchmen	746.75
Crossing	Watchmen	682.25
	s and Signalmen	
do		1,208.45
do	***************************************	1,675.95
Yard Cl	erks, Callers, Messengers, etc	896.30
do		1,650.85
do	***************************************	1,005.45
do	***************************************	769.25
	sters and Assistants	63.50
Hordors	and Switch Tenders	1,945.00
Foremen	and Switch Tengers	500.00
do		2,685.65
do	***************************************	2,499.70
Switchm	***************************************	1,619.00
		2,075.10
do	***************************************	1,907.10
do	***************************************	1,979.95
do	***************************************	1,502.45
do	***************************************	1,997.35
do	***************************************	1,419.10
do	***************************************	1,181.05
	epartment	919.05
do	***************************************	304.40
do		402.40
do	***************************************	682.45
do	***************************************	51.85
do	***************************************	543.85
do	***************************************	691.40
do	***************************************	10.00
do	***************************************	777.05
do	***************************************	20.00
do	***************************************	450.45
do	***************************************	614.95
do	***************************************	24.35
do	***************************************	402.80
do	***************************************	573.35
do	***************************************	76.30
	d Air Switch Inspectors and Porters	1.158.60
	ectors, etc	2.110.60
do	***************************************	
do	***************************************	1,754.75
do	***************************************	1,368.05
	ns, Engineers, Union Station, etc.	615.05
Vard Fn	gineers and Firemen	849.15
do Laru		3,038.65
do		2,994.70
	***************************************	1,719.75
do	031000000000000000000000000000000000000	1,534.40

STATEMENT No. 8, SHEET No. 8, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF SEPTEMBER, 1913.

Superintendent's Office	1.231 65
Union Station	1.873.50
do	798.80
do	795.00
do	189.95
Carpenters	1,427.20
Painters	935.90
Yard Watchmen	810.05

$374~{\rm city}$ of nashville, et al., v. l. & n. r. r. co., et al.

991.7 1,431.3 1,338.4 1,606.6 1,201.7 682.0 2,638.0 2,638.0 2,363.9 1,819.3 2,2126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,861.5 1,861.5 1,861.5 33.7 383.9 623.9
1,431.3 1,338.4 1,606.6 1,201.7 1,682.0 1,981.8 2,638.0 2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,338.4 1,606.6 1,201.7 682.0 1,981.8 500.0 2,638.0 2,363.9 1,819.3 2,126.1 1,819.3 2,126.1 1,819.3 2,126.1 1,842.2 1,842.2 1,842.2 1,861.5 1,717.4 859.2 333.7 383.9 623.9
1,606.6 1,201.7 682.0 1,981.8 500.0 2,638.0 2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 859.2 1,861.5 1,717.4 859.2 33.7 383.9 623.9
,201.7 682.0 1,981.8 2,638.0 2,638.0 2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 2,2087.7 1,842.2 2,1,861.5 1,717.4 859.2 33.7 383.9 623.9
682.0 1,981.8 500.0 2,638.0 2,363.9 12,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,981.8 500.0 2,638.0 2,363.9 1,819.3 1,819.3 2,2126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
500.0 2,638.0 2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
2,638.0 2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 33.7 383.9 623.9
2,363.9 1,819.3 2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,819.3 2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
2,126.1 2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
2,255.9 1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,774.8 2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
2,087.7 1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,842.2 1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,861.5 1,717.4 859.2 536.8 33.7 383.9 623.9
1,717.4 859.2 536.8 33.7 383.9 623.9
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439.8
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173.4
418.7
1,211.6
1,989.4
1,871.2
1,446.9
491.3
805.7
3,491.6
3,113.7
1,535.0
1,716.2
399.5

do	rks, Callers, Messengers, etc	. 1,57
do		
	Store and Aggistense	. 81
Herders	sters and Assistants	. 1,94
oremen	and Switch Tenders	. 49
do	and Cartenmen.	0.00
do	***************************************	
witchme		0.00
do	***************************************	4.044
do		
do	\$0000000000000000000000000000000000000	
do	W0000000000000000000000000000000000000	
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do	000000000000000000000000000000000000000	
do		1,984
do	000000000000000000000000000000000000000	1,915
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do	**************************************	76
do	\$0000000000000000000000000000000000000	741
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do	600 Back 60 50 Back 60	486.
do	\$6000000000000000000000000000000000000	589.
do		56.
do	***************************************	431.
do		582.
		112.
r Inano		1.113.
- ample	ctors, etc	2,040
44.0	***************************************	1.842
uo		1.442
40	***************************************	647
		861
	neers and Firemen	3,587.6
40		3,723
uo.		1.572.0
40		
uo .	***************************************	1,167.5
do .	0.000.000000000000000000000000000000000	389 6
Tot	ol	
		8,099.4
TEME	NT No. 8, SHEET No. 10, FILED IN ANSWER TO	INTER
ROC	ALL OLD MU. OU. SHOWING THE TOTAL OF ALL	
	NOVEMBER, 1913.	
erintend	lent's Office	
on Stat		
do		1,754.0
		857.5
0.0		879.0.

Superintendent's Office	1.235.00
do	1.754.40
do	857.50
do	879.05
Carnantana	40.00
Defeater.	1,326.35
	565,95
Yard Watchmen Crossing Watchmen	771.65
	707.50
Operators and Signalmen	1,368.50
do	1.781.50
	450.00
Yard Clerks, Callers, Messengers, etc.	1,485.20

376 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AL.

do	414499444444444444444444444444444444444	1,223.15
do	***************************************	778.85
do	***************************************	60.25
	sters and Assistants	1,945.00
Tard Ma	and Switch Tenders	499.40
Herders	remen and Switchmen	2,672.65
	remen and Switchmen	2,673.30
do		2,028.60
do	***************************************	1,753.95
do		1,931.05
do	***************************************	1,505.85
do	***************************************	1,607.40
do	***************************************	1,817.40
do	***************************************	
do	***************************************	1,699.65
do	***************************************	1,891.90
do		1,711.10
do	***************************************	263.70
Road D	epartment	771.65
do		342.55
do	***************************************	498.55
do	357\$46\$010304454540404040404040404040404040404040	700.20
do		111.55
do		659.60
do	***************************************	650.60
do		73.10
do	***************************************	659.00
do	***************************************	30.95
do	***************************************	509.35
do	***************************************	663.60
do	***************************************	67.20
do	***************************************	381.20
-	***************************************	468.30
do	***************************************	81.85
do	nd Air Switch Inspectors and Porters	1.164.25
Signal a	nd Air Switch Inspectors and Porters	2.018.40
-	pectors, etc	
do		1,863.60
do	***************************************	1,514.50
do	######################################	399.80
Electric	lans, Engineers, etc., Union Station	1,064.50
Yard E	ngineers and Firemen	3,354.7
do	***************************************	3,070.0
do	***************************************	2,083.20
do	40-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-	1,732.90
do	•••••••••••••••••••••••••••••••••••••••	859.90
40	***************************************	

STATEMENT No. 8, SHEET No. 11, FILED IN ANSWER TO INTER-ROGATORY No. 80, SHOWING THE TOTALS OF ALL THE PAY-ROLLS FOR THE MONTH OF DECEMBER, 1913.

Union Station	\$ 276.25
	160.00
	Messengers, etc
	116.80
	408.10
	546.00
	479.50
	486.50
	98.00
Cuparintendent's Offic	1 225 00
Ilnion Station	1,719.75
	665.80
	495.60
	291.25

Carpente Painters		1,004.8
	4.1	320.9
Tard W	atchmen	798.4
Crossing	Watchmen	784.7
Operator	s and Signaimen	1,406.2
QU	***************************************	1,512.6
do	***************************************	636.8
Yard Cle	rks, Callers, Messengers, etc	1,250.2
do	**************************************	797.3
do	C244407000000000000000000000000000000000	780.3
do	5-404-6-6-0-2-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0	172.7
Yardmas	ters	1,670.0
do	030077070000000000000000000000000000000	275.0
Herders	and Switch Tenders.	
Foremen	and Switchmen	500.0
do	***************************************	2,579.4
do	***************************************	2,094.8
witchme		2,284.2
do		1,451.3
do	***************************************	1,747.0
do	4-1	1,244.0
do	***************************************	1,530.0
do	***************************************	1,429.9
	\$0000000000000000000000000000000000000	1,694.0
do		1,193.6
do	***************************************	900.2
toad De	partment	761.5
ao	90*************************************	153.1
do		360.9
do	494444444444444444444444444444444444444	600.2
do	000	485.7
do	24923998404444444444444444444444444444444444	491.6
do	600000000000000000000000000000000000000	503.1
do	***************************************	
do	***************************************	393.2
ob	***************************************	433.0
do	***************************************	317.1
	r Switch Inspectors and Porters	316.9
ar Insn	ectors, etc	1,247.0
do	CUU	2,149.1
do	***************************************	1,824.1
do	***************************************	1,657.0
	To do to the second sec	302.8
nectricia	ns, Engineers, etc., U. Station	928.2
aru Eng	ineers and Firemen.	3,042.1
do	2497904000000000000000000000000000000000	2,996.2
do	425400000000000000000000000000000000000	1,748,1
do	***************************************	1,465.6
do	***************************************	1.194.5
		-, 20 2.00

CONTRACT FOR MAINTENANCE AND OPERA-TION OF NASHVILLE TERMINALS.

DATED 15th AUGUST, 1900.

THIS MEMORANDUM OF AN AGREEMENT, made this 15th day of August, 1900, by and between the LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation of the State of Kentucky, the first party, and the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, a corporation of the State of Tennessee, second party, WITNESSES:

T.

The parties hereto by an indenture of lease dated June 15, 1896, became the joint lessees of all the property of the Louisville & Nashville Terminal Company, situated, lying, and being in the City of Nashville and State of Tennessee; and in said indenture of lease the parties hereto covenanted and agreed with the lessor for the payment of certain rents and charges for, and all taxes, rates, assessments, levied and imposed, and the cost of all insurance placed upon the demised property during the term of said lease; and the parties hereto by agreement of even date herewith have covenanted each with the other for and have set forth the manner of the payment of said rents, charges, taxes, rates, assessments, and cost of insurance;

And the parties hereto have, by the terms of said lease, assumed and undertaken, and have covenanted with the lessor for the maintenance of said demised property as follows:

ARTICLE XIV.

"Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that said second parties, and their respective successors and assigns shall and will, during the term granted in the first Article, and during the term that may be granted in any new lease which may be executed as provided in the sixth Article, and during the terms that may be assigned in any new assignments of the leases mentioned in the second, third and seventh Articles, at their proper costs and charges, well and sufficiently maintain, and keep in repair, when, and as often as the same shall require, the

premises described in the first, second and third Articles, together with their appurtenances, including all rights of way, ways, and other easements, all such passenger and freight depot buildings, office buildings; sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures, and all such main and side railroad tracks, switches, cross-overs, and turn-outs, and all such other terminal facilities as may be hereafter erected or constructed by the first party, its successors or assigns, upon the premises described in the first, second and third Articles. And also, that in case the same, or any part thereof, shall, at any time during said terms, or during either of them, be destroyed or injured by fire, wind, or lightning, said second parties, and their respective successors and assigns, shall, and will, at their proper costs and charges, forthwith proceed to rebuild or repair the same, in as good condition as the same were before such destruction or injury. Provided, however, that all and every the sums or sum of money which shall be recovered or received by said first party, its successors or assigns, for or in respect of any insurance upon any of such property, shall be paid over by said first party, its successors or assigns, to said second parties, their respective successors or assigns, to be laid out and expended by them in rebuilding or repairing the property so insured, or such parts thereof as shall be destroyed or injured by fire, as provided in the tenth Article."

And the parties hereto now desire to provide for and prescribe the manner of the payment of the cost of said maintenance and repair of said demised property.

And the parties hereto have made an organization, known as Nashville Terminals, for the operation, maintenance, and conduct of the business of terminals at Nashville, embracing in that organization all the property, improvements, buildings, erections, and superstructures leased from the Louisville & Nashville Terminal Company, comprising a Union Passenger Station building and its appurtenances, baggage and express buildings, freight stations, roundhouse and coaling station, water tanks, office buildings, main and side tracks, and all and singular the terminal facilities of every kind belonging to said Terminal Company; and

The parties hereto have contributed and set apart for, allotted and attached to said Nashville Terminals the following described property of each of the parties

hereto:



THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

1. So much of the main and all the side and spur tracks and all erections, buildings, bridges, and all appurtenances and property lying and being between the northerly line of the property of the Carter Shoe Factory, being 1,320 feet south of Mile Post 183 of the Second Division of the Main Stem, and the line of the Louisville & Nashville Terminal Company at the south side of Gay street.

2. So much of the main and all side and spur tracks, together with all and singular the shops, buildings, erections, superstructures and bridges thereunto appurtenant and belonging, lying and being between the line of the property of the Louisville & Nashville Terminal Company on the north side of Spruce Street and the yard limit board south of South Nashville, being at Mile

Post 189 on the Nashville & Decatur Division.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

1. All main, side, and spur tracks of the Northwestern or Nashville Division from Cedar Street west to the end of the double track at the shops of the N., C. & St. L. R'y., together with all erections, buildings, bridges, and all appurtenances and property lying and being between

said points.

2. The West Nashville Branch extending from N., C. & St. L. new shops to Cumberland River wharf, including all side and spur tracks, together with all erections, buildings, bridges, and all appurtenances and property lying and being between said points, save and except the new shop and Centennial grounds, and the tracks, buildings, and superstructures thereupon.

3. So much of the main track of the Chattanooga Division and all sidings and spur tracks lying and being between the north line of Spruce Street and South Cherry Street crossing, together with all erections, buildings, bridges, and superstructures thereupon.

And the parties hereto now desire to also agree upon the terms of and provide for the operation of said Nashville Terminals, and the payment of the necessary expenses and charges incident thereto.

NOW, THEREFORE, it is agreed between the

parties hereto as follows:

T.

That the property herein described shall be and be known as Nashville Terminals and it shall be administered, operated, maintained, and used as such.

II.

That Nashville Terminals shall be managed by a "Board of Control," to consist of three members, to wit, the Superintendent of Nashville Terminals and the General Managers, respectively, of the parties hereto, of which Board of Control the Superintendent of Nashville, Terminals shall be Chairman.

III.

The Board of Control shall formulate and adopt such By-laws and Rules and Regulations, subject to the approval of the parties hereto, as will insure efficient and economical administration of the property under its management.

IV.

The operation of Nashville Terminals shall be under the immediate supervision and control of a Superintendent of Terminals to be appointed by the Board of Control; and there shall be imposed upon him and required at his hand, and he shall secure to the best of his ability, a strict, impartial, prompt, and economical administration of the property equally in the interest of both of the parties hereto without preference or priority of the one over the other. He shall appoint, subject to the approval of the Board of Control, a Station Master, a Master of Trains, a Road Master, a Supervisor of Bridges and Buildings, a Master Mechanic, a Ticket Agent and a Baggage Master, each of which officers shall perform the duties of his office as set out in the By-laws or Rules and Regulations; and each of them shall have a competent staff of employes for the conduct of the work and operations belonging or in any way appertaining to each his several department; and each of them shall be responsible to the Superintendent for the prompt and efficient working of his several department. The Superintendent shall have an adequate office force for the purpose of keeping an accurate and full account of the operations of said Terminals, showing the cost of said operations in each of the several departments, so that the proportions of the said cost of operations due to: be paid by each of the parties hereto may be correctly, readily, and easily ascertainable. Pay-rolls, vouchers, discharge tickets, and all needful warrants authenticating and authorizing payment of all moneys necessary and incident to the operation of the Terminal property, payment of which is hereinafter provided for, shall be prepared in his office.

Whatever expenses may be legitimately incurred in the maintenance and operation of Nashville Terminals

shall be apportioned as follows:

PASSENGER. All Union Station pay-rolls and all expenses for water, light and heat, repairs and supplies in, of, and about the Union Station and its appurtenant buildings, offices, yard, tracks, and appliances. Also all cost of services rendered by switching forces in the making up of passenger trains and the shifting, placing, and cleaning and caring for passenger equipment, including a percentage of yardmen's, enginemen's and firemen's wages, engine supplies, switch tenders, watchmen, etc., which percentage shall be based on the number of hours that yard engines are performing passenger service, as compared with the total hours that yard engines are engaged in all classes of service combined.

HOUSE AND PRIVATE SIDINGS. To this account shall be charged a percentage of all joint expenses (except direct passenger expenses), which shall be ascertained on the basis of the number of hours that yard engines are engaged in switching to and from house and private sidings, and bulk or team tracks, as compared with the total number of hours that yard engines are

engaged in all classes of service combined.

TRAIN YARD. To this account shall be charged the remainder of all joint expenses of maintenance and operation.

VI.

At the close of each and every calendar month the total expense for maintenance and operation charged to passenger account shall be apportioned between the parties hereto in the same proportion that the total number of passenger, express, baggage and mail cars, private cars and sleepers, and passenger locomotives handled for each of the parties hereto bears to the whole number of such cars and locomotives handled for both parties.

The total expense for maintenance and operation charged to "House and Private Sidings" account shall be apportioned between the parties hereto in the same proportion that the total number of cars placed on and withdrawn from house and private sidings, bulk or team tracks, for each of the parties hereto bears to the whole number of cars placed on and withdrawn from such

house and private sidings, bulk or team tracks.

The total expense for maintenance and operation charged to "Train Yard" account shall be apportioned

between the parties hereto in the same proportion that the number of cars of all kinds, and locomotives hauling trains received and forwarded for each of the parties hereto, bears to the whole number of cars of all kinds and locomotives hauling trains received and forwarded.

The Superintendent's office pay-roll and expenses, and all general and incidental expenses not otherwise provided for and not distributable to any or either of the accounts named, shall be apportioned between the parties hereto on per cents arrived at in each month by taking the average of the percents of the accounts named for the

same month.

PROVIDED, That before apportionment of expenses, as herein provided, there shall be deducted from the aggregate expenses in each and every calendar month all moneys received for, from, or on account of any rents, tolls, incomes, or charges for offices, buildings, or rooms leased or letten, and for or from any privileges of restaurants, news stands, lunch and dining rooms, and for services rendered to or for any individual, firm, or corporation other than the parties hereto.

VII

It is understood and agreed by the parties hereto that the separate freight stations of the parties hereto and their appurtenant tracks, and tracks assigned and allotted to each of the parties for receiving and delivering bulk or car-load freights, shall be maintained and operated for each of the parties direct, and all expenses of such maintenance and operation of each freight station and tracks, including expenses of agencies and freight house forces, and the assigned and allotted bulk tracks, shall be charged directly to and paid by each of

the parties hereto.

It is also agreed that the new Terminal roundhouse, buildings, water tanks, and coaling appliances, and all other appurtenant buildings and superstructures, shall be maintained and operated for and in the interest of the first party alone, and all expense of maintenance and operation of said roundhouse and appurtenances shall be charged direct to and paid by the said first party; PROVIDED, however, that all joint services rendered in repairs, fuel, water-supply, and all other incident services and supplies rendered and furnished for the joint use and benefit of the parties hereto, shall be charged to the joint terminal expenses and apportioned between the parties hereto as hereinbefore provided.

VIII.

It is understood and agreed by and between the parties hereto that all employes in the Operating, Maintenance, and Mechanical departments, including the freight and passenger stations, agents and employes, employed upon, in, or about the Nashville Terminals, shall be and are subject to the control and direction of the Superintendent of Terminals; Provided, that all subordinate officers, agents and employes engaged in the operation of Nashville Terminals, or any part thereof (not including herein the General Officers), shall be subject to removal on request in writing of either of the parties hereto made to the Board of Control and for good cause shown.

IX.

Pending the organization of either or any of the departments, as provided in Article IV hereof, which may, for economical or other prudential reasons, be postponed, it is understood and agreed that the Superintendent of Terminals may call upon the local departments of Maintenance of Way, Mechanical, or other department of either of the parties hereto to make such repairs and renewals as may seem to him expedient and neessary for, in, about, and upon the tracks, bridges, buildings, yard, machinery, and all other appurtenances and appliances thereto belonging, and for all such material as may be necessary in making such repairs and renewals, which services and materials either or both of the parties shall render, furnish, and supply, and charge Nashville Terminals therefor at cost.

It is also understood and agreed that the Superintendent of Terminals is authorized to make requisitions on the Supply, Mechanical, and other departments of the parties hereto for all other needful labor, supplies, materials, etc., required in the maintenance and operation of the property; and either or both of the parties hereto when, as, and as often as may be requested shall furnish such labor, supplies, and materials, charging

Nashville Terminals therefor at cost.

X.

The parties hereto shall set apart, allot, and appropriate solely to the use of Nashville Terminals, in good working order, a certain number of switching engines, fully adequate and competent to perform all the work of switching, pulling, and shifting trains and cars in and about the Terminals, of which whole number of engines

each of the parties hereto shall furnish a proportion corresponding in economic efficiency to the respective proportions of work to be performed for the parties hereto.

As compensation or rent for the engines so set apart, allotted, and appropriated for and to Terminal uses and purposes, Nashville Terminals shall pay to the parties hereto, in addition to maintenance and repairs hereby assumed by Nashville Terminals, four per centum per annum upon a valuation of said engines, to be made at the time of allottment by the Superintendents of Machinery of the parties hereto and a third person to be chosen by the said superintendents.

XI.

The party of the second part will collect for account of the Nashville Terminals all sums charged to individuals, firms, corporations, or other parties, for rents, charges, tolls, rates, or compensation for services rendered within the limits of the Nashville Terminals other than to or for the parties hereto; the Superintendent of Terminals to make collection vouchers for all such sums and furnish same to proper officers of the party of the second part.

XII.

It is understood and agreed by and between the parties hereto that the second party each and every calendar month will pay all pay-rolls, vouchers, discharge tickets, and other warrants for payment of moneys for labor performed and materials supplied for, to, and on account of Nashville Terminals; said pay-rolls, vouchers, discharge tickets, and warrants being first properly and fully approved by the officers of Nashville Terminals, duly authorized in the premises; and the second party shall present to the first party a duly authenticated bill with statements attached thereto prepared by the Nashville Terminals' officers, showing in detail the accrued monthly expenses and the percentage of each monthly total of expenses due by the first party to be paid, when the first party shall presently pay to the second party the full amount of its quota of said monthly expenses.

XIII.

It is understood and agreed by and between the parties hereto that the rights, privileges, uses, and enjoyments of all the property in Nashville Terminals, as de-

scribed in this agreement to, of, and by the respective parties hereto, are the same, equal, and joint, and none other, save and except as to the separate, independent, and sole use of the freight stations and appurtenant tracks and bulk tracks, and the terminal roundhouse and appurtenances as provided in Article VII hereof.

That any differences arising from, out of, or by reason of the maintenance and operation of Nashville Terminals, shall be submitted to the Board of Control, who shall hear and determine all matters of dispute, and their decision, which shall be unanimous, shall be held to settle, adjust, and determine all such matters of dispute. Failing a decision by the Board of Control, the matter so remaining undecided thereby shall be referred to the Presidents of the respective companies parties hereto for their decision. Failing agreement here, if deemed of sufficient importance for an independent opinion and decision, the matter shall be submitted to an arbitrator to be selected by the Presidents.

This agreement shall take effect on July 1, 1900, and run concurrently with and continue for the same space of time as the before-mentioned lease of June 15, 1896.

IN WITNESS WHEREOF, The parties hereto have signed their respective corporate names, by their respective Presidents thereto duly authorized, and have affixed their respective corporate seals, each duly attested by the Secretary of the parties respectively, the day and year first above written.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, By M. H. SMITH, President.

Attest: J. H. Ellis, Secretary.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, By J. W. THOMAS, President.

Attest: J. H. Ambrose, Secretary.

Mr. Jouett: In the physical handling of cars in the Nashville terminals, please state whether or not the cars handled for the Nashville, Chattanooga & St. Louis and the cars handled for the Louisville & Nashville are handled separately by separate engines and crews, or with the same engines and by the same crew

Mr. Bruce: The cars of both roads are handled together by the same switching crews; in other words, whenever we have a run to make the terminal engine and crew picks up all cars that are ready to go in that direction without any distinction being made as to whether it is Nashville, Chattanooga & St. Louis or Louisville & Nashville business.

Mr. Jouett: Please state what is the object of that

method of handling the business.

Mr. Bruce: For economy and to expedite the handling of the business. By handling of the business of both roads in one movement, it also operates to the advantage of industries in that it is not necessary to disturb the cars they are loading or unloading as often it would be in

the Louisville & Nashville and Nashville, Chatta-403 nooga & St. Louis business was switched separate-

ly.

Mr. Jouett: How is the expense of that service divided as between the two roads?

Mr. Bruce: It is divided on the basis of the number

of cars handled for each.

Mr. Jouett: Mr. Bruce, as joint superintendent for the Nashville, Chattanooga & St. Louis Railroad Company and the Louisville & Nashville Railroad in handling the business for each, including the maintenance as well as the transportation business, do you handle this work for each company as the independent and sole representative of that company or as the joint representative of both companies?

Mr. Bruce: As the independent representative of

each company.

Mr. Jouett: Your position, then, is in one respect

joint and in another several?

Mr. Bruce: Yes, sir; some I handle as a direct representative; some as the joint representative of the two roads.

Mr. Jouett: Is it or not true that in the operation of the Nashville terminals the Louisville & Nashville Railroad Company switches for the Nashville, Chatta-

nooga & St. Louis Railway or the Nashville, Chattanooga & St. Louis Railway switches for the

Louisville & Nashville Railroad?

Mr. Bruce: No. The Nashville Terminals switches for both as the direct agent of each.

Mr. Jouett: My question was whether either switched for the other?

Mr. Bruce: They do not.

Mr. Jouett: Please state in a general way from your knowledge and experience in the operation of these Terminals about what the total volume of the business now handled amounts to?

Mr. Bruce: "During the month of January, this year, we handled an average of 77 passenger trains, and

112 freight trains daily, which is below the normal daily

business for a year.

This means that there was a passenger or freight train moving into or out of the Terminals every 7.6 minutes. This does not include the movement of road engines of passenger and freight trains to and from the round houses, or the movement of yard engines handling city business, between the outside district and the train yards which are located between Cedar and Spruce Streets. and through which all through and city business is handled.

The train yards are taxed to their utmost when the business is normal; and when heavy, as it usually is they are badly congested, so that when there is any in-405

terruption to the regularity of movement of trains brought about by accidents in the yards, causing interruption of the routine yard work; or by accident on the road causing trains to be bunched, the situation is aggravated.

At such times, or when we have a spurt or extraordinarily heavy business, the delays in getting trains into and out of the yards, and in switching and distributing city business to and from the train yard, are heavy. Trains from all directions have been delayed from one to four hours on the main tracks within the terminal limits awaiting clear tracks to be made upon which to receive them.

Whenever we had any vacant tracks in the outlying districts, we have used them to hold inbound trains until such times as we could bring the cars into the train yards with yard engines, thus relieving the engine and crew. We often have to relieve train and engine crews on the main tracks, with yardmen and hostlers in order to avoid violation of the hours of service law.

At times the through and city business has been so heavy, and the train yards and assembling yards in the outlying district so congested that we have had 406 to arrange for switch engines moving a train of

city cars from the train yard to an outlying district, to pass another yard engine (which had cars from the same outlying district, enroute to the train yard to go forward) on the double tracks between the districts. In other words there would be no room in the outlying district to receive the engine from the train yard until the engine from that district had pulled its cars out; and the engine enroute to the train yard would have to stand on



BRUCE EN No. 2.

STATEMENT SHOWING NUMBER OF LOADED CARS REED AT AND FORWARDED FROM NASHVILLE, TENN., INCLUDING CARS INTERCHANGED WITH TENNESSEE CENTRAL RAILROAD DURING SIX MONTHS EG JANUARY 31, 1914.

	Receiv	red in L. & N	N. and N., C. &	St. L. Trai	ns. Forwar	rded in L. & N	. and N., C. & St	. L. Trains.		Switched
•	Delivered in Nashville	Delivered T. C. to be Switched.	Through Cars via L. &N N., C. & St. L.	Through Cars via T. C.	lating in Jashville Totalminals.	Originating in T. C. Terminals.	Through Cars via L. & NN. & C.	Through Cars from T. C.	Total.	Nashville
August, '13	8769	50	16727	20	2556(6652	32	16763	47	23494	930
September	8537	44	16469	38	250887393	18	16411	61	23883	546
October	8599	33	18659	47	273387292	21	18686	51	26050	639
November	8695	33	18411	54	271936426	14	18284	62	24786	1077
December	7382	32	16158	36	236085764	9	16230	54	22057	715
January, '14	8267	53	16883	31	252346653	10	16963	71	23697	681
TOTAL	50249	245	103307	226	1540270180	104	103337	346	143967	4608

STATE AND FORW ARREST TRAITMENTS TRANSPORT OF THE ARRANGE OF STREET BARLESOADS

	*	

the main track outside of the train yard, as much as two

hours until room could be made for its cars.

The congested condition of the train yards has been so serious that both the Superintendent and Trainmaster have frequently been called to the yards at all hours of the night, and have been compelled to remain in the yard practically all the time during the day and part of the night, for weeks and months at a time, directing the work, arranging for extraordinary movements in order to reduce delays as much as possible, and to encourage the men to work to the best advantage.

We have had to use the Lebanon Branch of the Nashville, Chattanooga & St. Louis, on which no trains are run at night or on Sunday, on which to set out through

trains from Chattanooga, temporarily during the night or on Sundays, and have often set three or four freight trains on that branch during Saturday night, which we were unable to move into the train yard until a short time before the first train was due from the Branch on Monday morning.

On Sundays, there are fewer passenger trains than on week-days, and we have been compelled to make use of the tracks in the passenger shed for handling freight

business.

On occasions, we have had great difficulty in keeping one of the double main tracks open for the movement of passenger trains. Were it not for the wise policy of the management in providing double tracks in all directions throughout the Terminals for some distance beyond, the delays and congested conditions would be far worse.

On account of the reduction in grade on some of the lines entering Nashville and the use of heavier power, the length of the trains have been increased beyond the capacity of the side tracks in the terminals, although when the yards were laid out the tracks were long enough to accommodate the longest train: Now, a great many trains of 50 or 60 cars are handled when the longest

track in the train yard holds only 39 cars, making it necessary to double the head end of the trains over onto a second track, one train thus occupying two tracks and the operation of doubling over interfer-

ing with the shunting or classification work.

Mr. Bruce's Exhibit No. 2, filed at page 408, shows that for the six months ended January 31, 1914, the Terminals received in Louisville & Nashville and Nashville, Chattanooga & St. Louis trains 50,249 city loads; 103,307 through loads; 245 loads for delivery to the Ten-

nessee Central City cars and 226 loads for delivery to the Tennessee Central for points beyond Nashville; making a total of 154,027 loads received. shows that the Terminals forwarded in Louisville & Nashville and Nashville, Chattanooga & St. Louis trains 40,180 loads originating in the terminals; 103,337 received from the Louisville & Nashville and Nashville & Chattanooga & St. Louis; 346 loads received

from points on the Tennessee Central for points on 409 the Louisville & Nashville Railroad and Nashville, Chattanooga & St. Louis Railway; 104 loads originating on the Tennessee Central terminals for points on the Louisville & Nashville and Nashville, Chattanooga & St. Louis making a total of 143,967 loaded cars forwarded; making a grand total of loads received and forwarded of 297,994 cars. In addition to this the Terminals handled in switch service 4,608 loads which include 1,149 cars switched for the Tennessee Central, and 3,459 switched from one industry to another within the Nashville Terminals. This brings the grand total of loaded cars handled to 302,602.

410 Prior to the organization of the Terminals we had difficulty in handling both the through and city business on account of the limited facilities at each of the yards, and it was to relieve this situation that the present facilities were constructed, and the present joint arrangement for one organization to handle

the business of both roads was entered into.

Prior to the time the joint arrangement went into effect a charge of \$2.00 per car was made by each road for switching city business arriving via the other. There were, however, three private tracks serving industries operated jointly by two roads several industries being located on one of these private tracks; that is, the yard crew of each road switched its cars to and from these jointly operated tracks.

Under these conditions neither line was able to give as good service in the handling of the city business as we are now giving under the congested conditions. For instance, a car arriving from the Nashville, Chattanooga & St. Louis for an industry located on tracks of the Louisville & Nashville at East Nashville would have to be switched to the Nashville, Chattanooga & St. Louis Clay Street yard, and wait there until the Louisville & Nash-

ville was in position to take it and make delivery. The same applied to cars arriving from points on 411 the Louisville & Nashville for delivery to industries located on tracks for the Nashville, Chattanooga & St. Louis.

At that time neither road had adequate facilities for handling their through or city business, and it was necessary to combine the facilities of the two roads and construct yards at some central point in order to cure the situation. There was no other solution of the difficulty except by the construction of a centrally located yard for the use of both roads to enable them to handle their

through and city business the most direct way.

As showing the practical result of the formation of the Nashville Terminals in the way of increasing the efficiency of the terminal work and expediting and generally improving the service of handling both the through and city freight, Mr. Bruce said that during the month of February, 1900, which was the last month the business of the two roads was handled separately, the average number of cars handled per engine per day was 65.7 and during the month of August, 1900, after the work of the two roads had been consolidated, the average number of cars handled per engine per day was increased to

101; in other words, an increase in efficiency of

53.5 per cent.

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During February, 1914, the average number of cars handled per engine per day was 100. While this apparently shows no increase in efficiency between August, 1900, and February, 1914, as a matter of fact there has been an increase in the tonnage brought about by the increased capacity and heavier loading of equipment. To illustrate this fact, Mr. Bruce cited the Annual Reports of the Louisville & Nashville Railroad Company which show that in the year 1900 the average number of tons per loaded car was 16.58, while in the fiscal year, ending June 30, 1913, the average was 30.39, an increase of 83.3 per cent, and he stated that what is true of the Louisville & Nashville tonnage, as shown by its Annual Reports, is in his opinion, true of the tonnage handled through the Nashville terminals.

He further said that under the present arrangement of handling all the business of both roads by one organization in a centrally located yard, they have been able to get the through business through the terminals and to classify and deliver the city business with far less delay than would be possible by separate forces using the same

facilities. The arrangement has also eliminated the delay of transferring the through business between widely separated yards and the delay of in-

terchanging the business between the two lines at a common point off the main line of traffic. Under the old arrangement all Louisville & Nashville trains arriving in East Nashville to be classified at that point, and again at South Nashville and all through business for the Nashville, Chattanooga & St. Louis delivered on interchange track at Clay Street, from which point it was moved to the Nashville, Chattanooga & St. Louis Broad Street yard, and there reclassified by them. Now one classifica-

tion of trains suffices for both roads.

Mr. Bruce expressed the opinion that it would be practically impossible to satisfactorily handle the city business by separate forces. There is a number of large industries who ship out daily from ten to thirty loads each, and with one engine switching Nashville, Chattanooga & St. Louis business and another engine switching Louisville & Nashville business the loading and unloading of cars at any large industry would be interfered with very seriously and would no doubt operate to increase the labor expenses of in handling their business

as well as to delay the movement of their cars to

414 destination.

For instance, during certain seasons of the year we have a very heavy movement of fertilizer from the different factories in Nashville, notwithstanding this is a low grade traffic, it has got to be moved within a very short period because the farmer will not order until he is about ready to prepare his ground and then he is governed largely by weather conditions, and can not stand any delays. As the result of these conditions the fertilizer manufacturers are continually hammering the railroad, not only to get in a plentiful supply of empties but to move out the loads to their destination with the least possible delay, and it would not be possible to give anything like as good service as we are giving on this traffic at this time, if each of these roads attempted to serve these industries separately with their own engines.

Mr. Jouett: Mr. Bruce, please state how many industries are served by the Nashville Terminals within this Nashville Terminal District by joint facilities of the two

roads?

Mr. Bruce: I file as Bruce's Exhibit No. 3 a list, consisting of three pages, of industries located on Nashville Terminals tracks (Louisville & Nashville and Nashville, Chattanooga & St. Louis), showing location num-

ber and character of business. This list embraces the industries that are reached exclusively by the 415

Nashville Terminal tracks and are not reached by the tracks of the Tennessee Central Railroad. The number of industries on this list is 170.

(The statement in question so identified was received in evidence and thereupon marked Defendants' Exhibit No. 3, Witness Bruce, received in evidence March 26, 1914, and is attached hereto.)

LIST (N. AN.	LIST OF INDUSTRIES LOCATED ON NASHVILLE TERMINAL TRACKS (N., C. & ST. L. R'Y AND L. & N. R. R.), SHOWING LOCATION NUMBER AND CHARACTER OF BUSINESS.	ASHVILLE TERMINAL TRACKS SHOWING LOCATION NUMBER
Location Vumbers.	NAME OF INDUSTRY.	CHARACTER.
243	Ahrens & Ott Manufacturing Co	Plumbing and Mill Supplies
585	Alford Lumber Co.	Lumber Manufacturers and Dealers Lumber Manufacturers and Dealers
328	American Syrup & Preserving Co	Syrup Manufacturers
109	Anchor Spring & Bedding Co	Mattress Manufacturers
164	Atlas Paint Co.	Paints, Oil and Glass
331	Bailey, A. C. Coal Yards	Fuel Dealers
207	Bissinger, M. & Co.	Hides, Pelts and Fur Dealers
312	Bond, E. M. Furniture Co	Furniture Dealers
449	Bradford Wholesale Furniture Co	Furniture Dealers
581	Buchanan Bros	Planing Mills
121	Bush & Co., W. G. (E. Nashville)	Srick Manuracturers Contractors Concrete
507	Carmichael Bruce	Lumber Manufacturer and Dealer
101	Carter Shoe Factory.	Shoe Manufacturers
349	Cash, R. L.	Contractor Concrete
106-415	Cayee Transfer Co.	Express, Dray and Transfer
243	Chattanooga Bakery Co-	Bakers
243	Cheek Neal Coffee Co	Violesale Orocers Coffee Dealers—Wholesale
510	Chestnut Lumber Co.	Lumber Manufacturers and Dealers
243	Coleman Tompkins & Co	Wholesale Grocers
182	Colley, E. S. Coal Yards	Fuel and Ice Dealers
103	Conquest Coal Co-	Retail Grain and Feed Dealers
321	Crozier, W. H.	Grain Dealers
585	Cumberland Foundry & Mfg. Co	Foundry and Manufacturing Co.

CHARACTER.	Lumber—Mill Work and Interior Finish Fran Dealers				Bridge Confront	Bridge Builders and General Contractors	Brewers	Wholesale Grain Dealers Lumber Mills	Stoves—Saddlery	Live Stock Dealers	Grain Dealers (Wholesale)	Merchandise Brokers	satisfactor of the same of the	Retail Grain and Feed Dealers	Hosiery Manufacturers Box Manufacturers	Lumber Manufacturers and Dealers	Fuel and Ice Dealers	Lumber Manufacturers and Dealers	Fertilizer Manufacturers	Brewers Agencies Wholesale Flour. Feed and Grein Free	Fuel Dealers
NAME OF INDUSTRY.	Davidson Hicks Green Co-Dorris & Sons, E. A. & J. W. Jordan & Co-Dorris C. W. Coal Yards.	Eagle Can Samuel G. & Co. Fall, J. H. & Co.	Federal Chemical Co.	Fletcher & Wilson Coffee Co	Foster Creighton & Gould Co	Gallegher, Thomas Gerst W. B.	Gillette Grain Co.	_			Hamilton Lumber Co.	Hardison, W. T. & Co.	Harsh, Alex. Co.	Hartford Hosiery Mills		Ging Station				_	_
Numbers.	110 120 557 335	243					530		435			150	3358					505 L		181 K	

les	504	King S W Cosl Varde	Contract Division
	145	Kirkpatrick, J. O. & Son	Lumber Manufacturers and Dealers
	126	Lanier Bros	Retail Grain and Feed Dealers
	179	Leftwick, W. M. & Co.	Contracting Engineers
	134-150	Lewis, E. T. & Co	Friek Manufacturers
	301-309	Liberty Mills	Flour Mills
	343	Lieberman, Loveman & O'Brien	Lumber Manufacturers and Declars
	135	Love Boyd & Co	Lumber Manufacturers and Dealers
	105	Lovenhardt & Co	Lumber Manufacturers and Dealers
	179	Lowe, F. G.	Produce
	461	Lucas Coal Co., A. J.	Fuel Dealers
	143	McCowan Lumber Co	Lumber Manufacturers and Dealers
	122	McEwen, J. A. & Co.	Grain Dealers
	280	Maddow John	Cost Design
	200	Mahoney Thomas	Coal Dealers
-	417	Marathon Motor Works (No. 1)	Automobile Manufacturers
P	243	Matthews Phillips & Co.	Wholesale Grocers
	328	Mays Hosiery Co-	Hosiery Manufacturers
	157	Memphis Coal Co-	Coal Dealers
	143	Merideth, J. P. Cedar Co.	Pole Dealers
	136	Model Steam Laundry	Laundry
	301	Moore, Geo. & Sons	Planing Mills
	584	Moreford Lumber Co. (Lumber Yards)	Lumber Manufacturers and Dealers
	565	Monarch Mfg. Co.	Clothing, etc.
	3500	Moseley Cooperage Co.	Coopers
	243	Napier Cheatham & Co	Merchandise Brokers
	177	Nashville Beef & Provision Co.	Beef and Pork Packers
	149	Nashville Bridge Co.	Pridge Builders
	108	Nashville Cut Stone Co	Stone Stone
	421	Nashville Durbon & Carbon Co.	Paints
	525	Nashville Hardwood Flooring Co	Hardwood Flooring Dealers
	118	Nashville Railway & Light Co	Railway, Light, Power and Heating Co.
	325	Nashville Warehouse & Elevator Co	Grain Elevator
	243	Nashville Woodenware Co	Woodenware
		Nashville Woolen Mills.	Woolen Mills
		National Casket Co	Casket and Coffin Manufacturers
		Neil & Shofner Grain Co	Wholesale Grain Dealers
	192	_	Steel and Fork Packers
	1	Newsom Cut Stone & Quarry Co.	NOME

CHARACTER.	Cold Storage, Ice and Lard Lumber Manufacturers and Dealers Stone Coal Dealers (val Dealers (val Dealers Cigar, Tobacco and Grocery Dealers Coal Dealers Gas Dealers Gas Dealers Gas Dealers Lumber Manufacturers and Dealers Feed	Lumber Manufacturers and Dealers Fertinzer Manufacturers Handle Manufacturers Wholesale Grain Dealers Grain Dealers Carriage and Wagon Mfgrs. and Dealers Faryer Bag and Box Manufacturers Spoke and Handle Manufacturers Retail Grain and Feed Dealers Furniture Manufacturers Grain Elevator Coal Dealers	Junk Dealers Bakers Marble and Granite Works Founders The Mannfacturers and Dealers Lumber Manufacturers and Dealers Fromiture Manufacturers Furniture Manufacturers Grain Warehouse Grain Pork Packers
NAME OF INDUSTRY.	Noel & Co	Rausom, John B. & Co Read Phosphate Co Reuther Scaulon Haudie Co Riley, J. F Ribey, J. F Robinson-Medill Carriage Co Rock City Paper Box Co Rock City Spoke Co Rock C. P. & Co Ryman Elevator Ryman Elevator	Samuels & Blum. Shelby Biscuit Co. Southern Cut Stone & Monument Co. Southern Poundry. Southern Lee Co. (E. Nashville) Southern Lumber & Mfg. Co. Stuthern Roding & Paving Co. Standard Furniture Co. Standard Furniture Co.
Location Numbers.	465 345 310 310 520 512 512 461 410 308 111 111		207 243 246 346 131 130 131 142 142 143 143 144 144 144 144 144 144 144 144

Chemical and Fertilizer Manufacturers Oils Wholesale Grain Dealers Harness Manufacturers and Dealers Lamber Manufacturers and Dealers Metal Culverts Shoe Manufacturers Wholesale Produce Dealers Woof and Paving Contractors Stock Yards Telegraph Co. Coal and Ice Dealers Junk Penders Sandf Manufacturers Staves and Heading Trunk Manufacturers Staves and Heading Trunk Manufacturers Retail Grain and Feed Dealers Lumber Manufacturers Evenin and Feed Dealers Lumber Manufacturers Broom Manufacturers
Tennessee Cotton Oil College Chemical College Cotton Oil College Cotton Oil College Cotton Oil College Cotton Oil College Coll
550-551 227 561-558 661-558 663 111 568 663 663 663 663 663 663 663 663 663 6

Nashville, Tenn., March 24, 1914.

BRUCE'S EXHIBIT 4.

Mr. Bruce: I also file as Bruce's Exhibit No. 4, a list of industries located on the tracks operated jointly by the Nashville Terminals and by the Tennessee Central Railroad, the number of industries being 21.

(The statement in question so identified was received in evidence and thereupon marked Defendant's Exhibit No. 4, Witness Bruce, received in evidence March 26,

1914, and is attached hereto.)

THE RESERVE OF THE PERSON NAMED IN COLUMN TWO IS NOT THE PERSON NAMED

Nashville, Tenn., March 23, 1914.

BRUCE'S EXHIBIT 5.

Mr. Bruce: I also file as Bruce's Exhibit No. 5, a list of industries reached by separate tracks of the Nashville Terminals and Tennessee Central Railroad, the number being 31.

(The statement in question so identified was received in evidence and thereupon marked Defendants' 416 Exhibit No. 5, Witness Bruce, received in evidence

March 26, 1914, and is attached hereto.)

CHARACTER.	Bakers Lumber Manufacturers and Dealers Fish, Oyster and Game Dealers Hardware, Stoves and Tinware Brick Manufacturers Grain and Feed Grain and Grist Mills Grain Dealers Lumber Manufacturers and Dealers Lumber Manufacturers and Dealers Hardware Builders Supplies Machinery Manufacturers and Dealers Hardware Lumber Manufacturers and Dealers Hardware Grain Elevator Builders Supplies Mattress Manufacturers and Dealers Hardware Lumber Manufacturers and Dealers Handle Manufacturers Gas Dealers Lumber Manufacturers Lumber Manufacturers Commen Manufacturers
NAME OF INDUSTRIES.	American Bread Co. Baker Jacobs Lumber Co. Buoth Fisheries Co. Burford Bros. City Grain & Feed Co. Columbia Grain Co. Columbia Grain Co. Columbia Crain Co. Ewing & Gilliand. Ford Flour Co. Ford Flour Co. Ford Flour Co. International Hardware Co. Reith Simmons & Co. Reith Simmons & Co. Nalve Spillers & Co. Nalve Spillers & Co. Nashville Abbatoir Hide & Melting Assonation Briting Co. Nashville Spoke & Handle Co. Nashville Spoke & Handle Co. Phillips & Buttorff Mfg. Co. Scheffer Jos. Lumber Co. Schadard Oil Co. of Louisiana. Standard Co. (Howe Plant).
Location No's. N. T. T.C. R.R.	44.14.4 44.17.4 44.17.4 44.18
Location N. T.	1183 1404 1404 1404 11183 1118

Mr. Bruce: This list totals up 222 industries.

For easy reference, I have had prepared and also file as Bruce's Exhibit No. 6, a map on which the industries included in these various lists are shown by their location numbers, in other words, the location number given opposite each industry on the list will enable anyone to find the location of such industry on the map.

(The statement in question so identified was received in evidence and thereupon marked Defendants' Exhibit No. 6, Witness Bruce, received in evidence March 26,

1914, and is attached hereto.)

Mr. Bruce: On this map, which is in two sheets, the Louisville & Nashville tracks are shown in yellow, the Nashville, Chattanooga & St. Louis tracks are shown in red, and the Louisville & Nashville Terminal tracks are shown in green. Some of these tracks colored in green are located on Nashville, Chattanooga & St. Louis property and some on Louisville & Nashville property. This was explained fully by Mr. Trabue and I have shown the whole Louisville & Nashville Terminal Company in green

on this map simply for convenience.

These lists of industries have been carefully revised up to date and, to the best of my knowl-

edge and belief, are correct.

417

Mr. Jouett: Please state from such data as you may have the car capacity of the industrial tracks on the Nashville Terminals and on the Tennessee Central Railroad.

Mr. Bruce: I file as Bruce Exhibit No. 7 a map which shows in yellow the main lines and industrial tracks within the switching limits of the Louisville & Nashville Railroad, and, in red, the similar tracks of the Nashville, Chattanooga & St. Louis Railway, and, in green, similar tracks of the Louisville & Nashville Terminal Company.

(The map in question so identified was received in evidence and thereupon marked Defendants' Exhibit No. 7, Witness Bruce, received in evidence March 26, 1914,

and is attached hereto.)

Mr. Bruce: These tracks, colored in yellow, red and green, constitute the Nashville Terminals. The map also shows, in black, the main tracks and industrial tracks of the Tennessee Central Railroad. Opposite each industrial track is shown the car capacity of said track and attached to the map is a recapitulation which shows that

the capacity of the tracks of industries located exclusively on the Nashville Terminals in 2,340 cars, while the capacity of the tracks of industries



BRUCE'S EXHIBIT No. 8.

STATEMENT SHOWING DETAIL OF CHARGES TO OPERATING EXPENSES, L. & N. AND N., C. & ST. L. TERMINAL FOR SIX MONTHS ENDING JANUARY 31, 1914. SUBDIVIDED BETWEEN PASSENGER TRAFFIC—THROUGH— CITY FREIGHT TRAFFIC.

MAINTENANCE OF WAY AND STRUCTURES.

	Column (A) Charged to Passenger Traffic.		Column (C) Charged to City Traffic. (only).	Column (D) Charged to Through Traffic (only)
Superintendence Ballast Ties Rails Roadway and Track Other Track Material. Cleaning Right of Way Bridges, Trestles and Culverts. Over and Under Grade Crossings. Grade Crossings, Cattle Guards, etc. Right of Way Fences. Signal and Interlocking Plants. Telegraph and Telephone Lines. Water Stations Fuel Stations Shops, Engine Houses, etc. Station Office and other Buildings. Roadway Tools and Supplies Injaries to Persons. Stationery and Printing. Maintaining Joint Tracks Yards, etc. "Dr." Maintaining Joint Tracks Yards, etc. "Cr"	\$ 228.60 16.97 549.39 105.83 1,270.28 1,539.66 219.22 327.39 136.63 23.82 79.08 550.17 51.60 26.00 237.32 246.48 10,768.71 49.08 22.81 3.02 7.10	\$ 3,483,98 273,60 17,980,69 3,315,22 19,948,88, 12,614,22 3,845,91 5,507,54 2,037,64 362,14 1,164,11 8,329,53 787,31 418,23 570,94 592,94 (G)3,354,95 748,97		
TOTALS.	\$ 16,459.16	\$ 85,280.86	\$ 132.99	

MAINTENANCE OF EQUIPMENT.

	Column (A)	Column (B)	Column (C)	Column (D)
Superintendence Steam Locomotives, Repairs Steam Locomotives, Renewals	\$ 233.27 1,441.19	\$ 3,310.35 21,951.05		
Steam Locomotives, Depreciation Passenger Train Car Repairs Freight Train Car Repairs	403.96 (F)4,928.57	6,153.82		
Freight Train Car Renewals			(F)14,618.39	(F)17,342.01
Shop Machinery and Tools (E)	**********			
Stationery and Printing.	13.13	199.88		
TOTALS.	* 7,020.12	\$ 31,615.10	\$ 14,618.39	\$ 17,342.01

For explanation of references, see Sheet 3.

TRANSPORTATION EXPENSES.

	Column (A) Charged to Passenger Traffic.	Column (B) Charged to Through and City Traffic.	Column (C) Charged to City Traffic. (only).	Column(D) Charged to Through Traffic(only)
Superintendence	\$ 259.04			25-10
Dispatching Trains	1,256.10	\$ 3,946.42		
Station Employes				\$ 3,383.90
Weighing and Car Service Ass'ns.	21,996.38		\$ †7,592.28	2,454.49
Station Supplies and Expenses.			1,040.18	
Yardmasters and their Clerks	12,387.47	************	†448.68	
Verd Conductors and Probance		32,096.15	5,225.00	
Yard Conductors and Brakemen	7,683.41	117,207.54		
Yard Switch and Signal Tenders.	1,214.34	18,833.26		
Yard Supplies and Expenses.	384.48	5,928.67		
tard Enginemen	3,972.06	58,945.67		
THE HOUSE EXPENSES VARA	535,25	8,163,20		
Fuel for Yard Locomotives	3,127.66	46,060,96		
Water for Yard Locomotives	150.16	2,268,21		
Lubricants for Yard Locomotives	59.09	886.23		
other Supplies for Yard Locomotives	136,42	2,077.91		
Tail Supplies and Expenses	2,100.85	462.43		*************
Tussing Flagmen and Gatemen	281,48			6,188.00
prawbridge Operation	33.49	4,282.57		
Clearing Wrecks		509.44		
Telegraph and Telephone Operation	25.27	944.09		
Stationery and Printing	196.52	3,000.09		
Loss and Damage Projekt	145.16	2,213.73		164.64
Loss and Damage Freight		‡542.10		38.65
Loss and Damage Baggage	318.77			
Damage to Property.		866.13		
ramage to Stock on Right of Way		103.92		
	2,612.79	1,026.98		
ujuries to Employes	73.00	10,131.06		10.50
perating Joint Track and Facilities "Dr"			28.64	10.30
Injuries to Employes. Departing Joint Track and Facilities "Dr". Departing Joint Track and Facilities "Cr".			104.25	
TOTALS	\$ 58,949.19	\$325,364.76	\$ 14,266.53	\$ 12,240,18

GENERAL EXPENSES

	Co	lumn (A)	Column (B)	Column (C)	Column(D)
Cost of paying Terminal Pay-rolls. Law Expenses Pensions Other Expenses TOTALS Add 5% of Maintenance, Way and Structures, Add 5% of Maintenance of Equipment, Add 5% of Transportation Expenses, to cover proportion of General Expenses not allocated	*	20.24 49.30 .42 69.96	\$ 308.71 758.27 270.00 6.98 \$ 1,343.96		
TOTALS	*	4,191.38	\$ 26,387.00		

For references see Sheet 3.

. STATEMENT SHOWING

	Column (A) Charged to Passenger Traffic.	Column (B) Charged to Through and City Traffic	Charged to City Traffic (only).	Charged to Through Traffic (only)
Maintenance of Way and Structures. Maintenance of Equipment. Transportation Expenses General Expenses	7,020.12	\$ 85,280.86 31,615.10 325,364.76 26,387.00	\$ 132.99 14,618.39 14,266.53	\$ 17,342.01 12,240.18
DISTRIBUTION OF COLUMN "B,"	\$ 86,619.85	\$468,647.72		
Charged to Handling City Traffic 78.34%			367,138.63	101,509.09
TOTAL.			\$396,156.54	\$131,091.28
Number of Cars handled			95,958 \$ 4.128	103,322 \$ 1.269

(E)-None directly charged. Included in bills against Terminals for repairs to equipment.

(F)-Includes cost of repairs to cars damaged in accidents and cost of inspection only. (G)-Does not include \$1,506.65 for maintenance of Nashville Freight Station.

†-These items include only the amounts chargeable direct to handling Carload City Traffic (viz.: Expense of Agencies at West, South and East Nashville). The following expenses of L. & N. and N., C. & St. L. Agencies at Nashville (proper) were not taken into account, though a part of this expense is properly chargeable to Carload City Traffic:

Station Employes, Freight \$107,106.75 Station Supplies and Expenses..... 9,636.52

\$116,743.27

‡-Includes only such Loss and Damage as resulted from Accidents for which Joint Employes were responsible. Nashville, Tenn., March 25, 1914.

STATEMENT SHOWING PERCENTAGES FOR DISTRIBUTION OF EXPENSES BETWEEN CITY AND THROUGH FREIGHT TRAFFIC, COLUMNS "C" AND "D" OF EXHIBIT ATTACHED.

DISTRIBUTION OF TIME OF YARD CREWS BREAKING UP AND MAKING UP FREIGHT TRAINS.

		or randal ik	AINS.
City cars loaded, handled inbound.	Number of Cars.	Number of Cars. 50,720 40,630	Per Cent
TOTAL CITY CARS		91,350	46.925
Less one-half on account of these Yard Engines handling through cars	206,644		
on arrival only	103,322	103,322	33.075
Total number handled by Engines breaking up and making up trains		194,672	100.00%

DISTRIBUTION OF TIME OF ALL YARD CREWS HANDLING FREIGHT TRAFFIC.

Crews breaking up and making up freight trains	Hours. 149,258.2	Handling Through Cars. Hours.	Handling City Cars. Hours.
	216,541.2	79,218.8	216,541.2
Total time of crews handling freight cars Per cent charged to THROUGH CARS Per cent charged to CITY CARS	365,799.4	79,218.8 21.66	286,580.6
Canal			78.34



located exclusively on the Tennessee Central Railroad is 617 cars. It also shows that the capacity of the tracks of industries located jointly on tracks operated by the Nashville Terminals and the Tennessee Central Railroad is 191 cars and the capacity of tracks of industries having sepan rate tracks from the Nashville Terminals and the Tennest see Central Railroad is 273 cars.

Mr. Jouett: If you have made any calculation of the cost of the terminal service involved in the handling of cars to and from industrial locations within the Nashvilla Terminals, please state what that cost is and explain in detail how it was arrived at?

Mr. Bruce: From investigations I have caused to be made, I have ascertained that the average cost per car for handling city traffic in the Nashville terminals is \$4,128.

In explanation of the method of obtaining this cost, L. file as Bruce's Exhibit No. 8, a statement—three sheets—; setting forth in detail the operating expenses of the Nashville Terminals by primary accounts for the six months ending January 31, 1914, sub-divided be-

tween passenger traffic, through and city freight 419 traffic.

(The statement in question so identified was received in evidence and thereupon marked Defendants' Exhibit No. 8. Witness Bruce, received in evidence March 26,

1914, and is attached hereto.)

Mr. Bruce: In the distribution of these expenses, all the charges which could be directly assigned to the passenger traffic were charged to that traffic and all expenses which could be directly assigned to the freight traffic were charged to that traffic. The expenses common to both classes of service were distributed between passenger and freight traffic on the basis of use made by each class of service measured by the hours of time devoted to each class of traffic by the yard crews.

Having obtained the total amount of expenses assignable to the freight traffic a further sub-division was made of such expenses as between that chargeable to the through traffic and that chargeable to the city traffic. All expenses which it was possible to directly assign to the city traffic were so assigned and are shown in Column "C." All expenses chargeable exclusively to the through traffic were charged to that traffic and are shown in Column "D." The freight expenses that are common to

both through and city traffic are shown in column

"B." 420

The expenses shown in this statement are the expenses charged in the operating expense accounts of the Nash-ville terminals for the six months referred to.

I will state that in our regular distribution of expenses, we, each month, assign certain expenses direct to the passenger traffic and direct to the freight business. In the case of maintenance of way and structure block, the cost of maintaining all facilities used exclusively by the passenger traffic are charged direct to passenger and the cost of maintaining all facilities used exclusively by the freight traffic are charged direct to that traffic. The same is true with respect to the maintenance of equipment, transportation and general expenses.

On page 3 of this statement a recapitulation is shown of the total expenses and the total of the amount shown in Column B, \$468,647.72, which is common to both through and city traffic, is apportioned to Column C, city traffic, and Column D, through traffic, in the following

manner:

As shown by the typewritten statement attached to the Exhibit, the total number of loaded city cars inbound and outbound was 91,350; the total number of through cars inbound and outbound was 206,644. As through

cars are only handled once by the crew assigned to the breaking-up and making-up of trains, that is 421 upon their arrival, the total number of inbound and outbound through cars has been divided by two to arrive at the number of through cars handled by these break-up switching crews, which, as shown by the statement, was 103,322, making the total number of cars handled by crews making-up and breaking-up trains 194,672 of which the city cars represented 46.925 per cent and the through cars 53.075 per cent. The total number of hours worked by crews making-up and breaking-up trains for the six months period was 149,258.2 hours. Apportioning this time to handling through cars and city cars on the percentages quoted above, 53.075 per cent, or 79,218.8 hours, is charged to handling through ears, and 46.925 per cent or 70,039.4 hours, was charged to handling city cars. The total number of hours the crews engaged in handling city freight cars exclusively during this period was 216,541.2, making the total time of crews handling freight cars for the through service 79,218.8 hours, for handling city cars 286,580.6 hours, a grand total of 365,799.4 hours, of which the time required in handling through freight cars represented 21.66 per cent and the

time required in handling city freight cars represented 78.34 per cent.

422 The total expenses common to both through and city traffic, as shown by Column B on sheet three of the exhibit, \$468,647.72, was distributed on the basis of the foregoing percentages. Assigning to the city traffic 78.34 per cent or \$367,138.63 and to handling through traffic, 21.66 per cent, or \$101,509.09, a total expense chargeable to the city freight traffic, as shown by column C, \$396,-156.54, and as chargeable to the through traffic, as shown by column D, \$131,091.28.

The total number of loaded cars handled in the city traffic for the six months period was 95,958 and by dividing this number into the total expense incident to the city. traffic, \$396,156.54, produces an average cost per car of

\$4,128, approximately \$4.13.

Attention is called to the fact that there has been omitted from the transportation block of expenses for charges to station employees, freight, \$107,106.75 and to stations' supplies and expenses \$9,636.52, or a total of \$116,743.27, which were incurred in handling the carload and less than carload traffic of the Louisville & Nashville and Nashville, Chattanooga & St. Louis agencies at Nashville proper, and while this entire amount has been omitted from the expenses in arriving

at the average cost of \$4.13 per car, a proportion 423 of this \$116,743.27 is properly chargeable to the carload city traffic as the expenses include the salaries of team track clerks, carload delivery clerks, waybill clerks, freight bill clerks, cashier and accountant, who all handle, to some extent, the city switching as well as the expenses of the agent, who gives general supervision over said clerks.

The operating expenses of the terminal do not include any depreciation for maintenance of way and structure.

Attention is called to the block of general expenses or page 2 of the Exhibit and it will be noted that there are only four small items charged through our accounts in this block of expenses. I have therefore added to the total charges of maintenance of way and structure block, maintenance of equipment block and transportation expenses, 5 per cent to cover a proportion of general expenses not embraced within the operating expense accounts of the terminal, for the reason that the general officers of the Nashville, Chattanooga & St. Louis Railway and Louisville & Nashville Railroad devote a considerable portion of their time to the affairs of the Terminal Company without charge, and, in ascertaining the cost of service, it is proper to include a proportion of

such expenses.

In arriving at this charge of five per cent I made investigations of numerous terminal companies and from a tabulation of the operating expenses of sixteen of such companies ascertained that the block of general expenses was 6.365 per cent of all other expenses and I therefore added five per cent as shown on this statement to make the general expenses fairly representative. Taken from Poor's Manual 1913 issue.

Mr. Jouett: You have stated the average cost of \$4.13 per car. Does this amount include anything other than the operating expenses which you have just referred

E01-

Mr. Bruce: The average cost for handling a car, given by me, does not include any charge for taxes, interest on bonded debt, depreciation or maintenance of way and structures, hire of locomotives, etc. It is proper to state that the amounts shown in the transportation block of expenses for loss and damage freight includes only such losses and damage as resulted from train accidents which were brought about by negligence of joint employes. Any other losses occurring in Nashville are assumed by the individual lines.

It is a well-known fact that a very large proportion of loss and damage freight arises while cars are in the

terminals.

425 We have not included all of the items of 426 expense, such as overhead expense, the valuation of property, interest on property, nor, have we included, as I have stated, in answer to the last question, any portion of the expenses of the two large freight stations, a great portion of which, in my opinion, is properly chargeable to the handling of city business. So far as the charges of the agent and his force go, in connection with the handling of cars passing through Nashville, from one point to another on the Louisville & Nashville or the Nashville, Chattanooga & St. Louis Railway, that force could be entirely eliminated. The accounts on the through business are handled on interline billing, and the accounts are handled by the auditors of the roads interested, so that practically all of the-well, in fact, all of the time of the employees of the local freight stations are devoted to looking after city business, but not all of that could be charged to switching and a large portion of it could be charged to atten-

tion given to the movement of city business.

Mr. Jouett: And if I understand you, if the overhead charges were added to what you have described, it would be even greater than \$4.13?

Mr. Bruce: Yes. sir.

Mr. Jouett: Now, my question is this: How do you account then, for the fact that the charge in Nashville is only \$3, and that there is a corresponding-

ly low charge at other cities?

Mr. Bruce: I do not think that the cost of the service of switching cars has ever been taken into consideration in fixing the rates. It has never been discussed by me with anyone having to do with the fixing of the switching charge.

Mr. Jouett: Mr. Bruce, to what extent is interchangeable switching service being performed by the Nashville Terminals organization of the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads and the Ten-

nessee Central Railroad, each for the other?

Mr. Bruce: Each is switching non-competitive business for the other. There is one exception to this rule in the fact that the Tennessee Central switches both competitive and non-competitive grain to and from the Hermitage elevator for the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads. That is covered by Rule 41/2 of the Louisville & Nashville tariff and Rule 9 of the Nashville, Chattanooga & St. Louis tariff.

Mr. Jouett: Do you know why the Tennessee Central switches competitive grain to and from the Hermitage elevator and does not switch other competitive traffic for

the Louisville & Nashville and Nashville, Chatta-

428 noga & St. Louis roads?

Mr. Bruce: I do not know anything more about the matter than that our agents advised me by way of information that the Tennessee Central had agreed to handle business to and from the Hermitage elevator.

Have you ever been informed by the Tennessee Central or by others that the Tennessee Central handled any other competitive business for the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads?

Mr. Bruce: I have not.

Mr. Jouett: Can you state how many cars of business! have been interchanged under this rule in a given period?

Mr. Bruce: During the six months ending January 31, 1914, we received from the Tennessee Central for placement in our terminals, 952 loads. We also delivered to the Tennessee Central Railroad 196 cars loaded on the tracks of the Nashville Terminal for points reached by the Tennessee Central, making a total of 1,149 loads switched for the Tennessee Central to and from industries on the Nashville Terminals tracks.

During the same period we delivered to the Tennessee
Central for placement on their tracks 245 loaded
cars and received from the Tennessee Central 104
cars loaded on Tennessee Central tracks for points
on the Louisville & Nashville and Nashville, Chattanooga
& St. Louis roads, making a total of 349 cars switched
to and from industries on Tennessee Central tracks for
the Louisville & Nashville and Nashville, Chattanooga &
St. Louis.

Mr. Jouett: Have you a list of the industries located exclusively on the tracks of the Tennessee Central Railroad in Nashville; if so, please file the same with such

explanation as you deem proper?

Mr. Bruce: I file as Bruce's Exhibit No. 9, consisting of two pages, showing in list No. 1, the industries on the Basin Alley track of the Tennessee Central Railroad, being 24; also, in list No. 2, the industries located on the Front Street track of the Tennessee Central south of Union Street, being 38; also, on the second page of list No. 3, the industries located on the Tennessee Central Railroad other than shown in lists Nos. 1 and 2, being 25, making a grade total of 87.

(The statement in question so identified was received in evidence and thereupon marked Defendant's Exhibit

No. 9, Witness Bruce, received in evidence March 26, 1914, and is attached hereto.)

BRUCE'S EXHIBIT 9.

LIST OF INDUSTRIES ON BASIS ALLEY TRACK OF THE TENNESSEE CENTRAL RAILROAD (BLOCK No. 1). List No. 1.

CHARACTER,		Crackers, etc. Crackers, etc. Engines and Thrashers Storage Warehouse and Coal Yards Junk Dealers and Storage Warehouse Produce Dealers Warehouse Class Warehouse Paint Factory and Warehouse Seran Iron
NAME OF INDUSTRIES.	Alloway, Ollie American Steam Feed Co. Baff, B. & Son. Carey Co., The Philip. Doss Transfer Co. Emerson Brantingham Co. Leftwortz, W. T. & Co. Loose Wiles Biscuit Co. McLemore Crutcher & Co. Morchead and Young. Nashville Creamery Mrg. Co.	National Biscuit Co. Nathols & Shepard Co. Price Bass Co. Roth, Meyer Sawrie, W. S. & Sons. Southern Warehouse Co. Tune and Wright. Union Carbide Sales Co. Warren Bros. Warren Bros. Warren Paint and Color Co.

TENNESSEE CENTRAL RAILROAD (SOUTH OF UNION STREET)

American Paper Box Manufacturing Co P.	
_	Paper Boxes
Dearliest Carriage Co	Carriage and Wagon Mfgrs. and Dealers
Bennie, Alex & Co.	Notions
Berry Demoville & Co	Wholesale Drugs
Brandon Printing Co.	Printers and Stationers
Britt & Roberts W	Wholesale Produce
Clements Paper Co.	Paper
Crutchfield, J. A. & Co.	Hardware
Sumberland Seed Co.	Seed
Deeds & Jordan Buggy Co.	Buggies and Wagons
Derryberry, M. E. & Co.	Wholesale and Retail Grocers
Diehl & Lord	Bottlers
Interprise Soan Works	Soap
raham Paner Co.	Paper
Trean Matthews & Co	Implements
Henderson W T & Co	Brokers
Horman Bros. Lindanor & Co.	Wholesale Dry Goods and Shoes
Hitchook I. H & Son	Hardware Seeds Grain etc.
Toppar Crossey Co.	Groceries
Lester and Cunningham	Storage and Transfer
Lipscomb, H. G. & Co. (2 locations)	Wholesale Hardware
McKav & Morgan	Brokers
McKay Reece & Co.	Hay, Grain and Seed
Montgomery Moore Mfg. Co.	Harness and Saddlery
Vashville Paper Stock Co.	Serap Paper
Nashville Plumbers & Mill Supply Co.	Plumbing and Mill Supplies
National Anilene Chemical Co.	Laundry Supplies
Velson, Charles	Wholesale Whiskies
Drr, J. H. & Co	Wholesale Grocers
Orr Jackson & Co.	Wholesale Grocers
Orr Mizell & Murray Co	Wholesale Grocers
Phillips & Buttorff Mfg. Co H.	Hardware and Furnishings
Peard, Geo. Belting Co L.	Leather Belting
Riddle, The Co.	Sash, Doors, Paints, etc.
Ryman Line	Office and Warehouse of Steamboat Line
Smith, Herrin & Baird	Hardware and Furnishings
-	

LIST OF INDUSTRIES LOCATED ON TENNESSEE CENTRAL RAILROAD, OTHER THAN SHOWN IN LISTS 1 AND 2.

NAME OF INDUSTRIES.	CHARACTER.
Bonner Furniture Manufacturing Co- Cowsert and Cowsert.	Furniture Grain
	Pole Yard and Warehouse Brick
36	Builders Supplies
Island Block Mills	Oils and Grease Spokes
Elevator)	Flevator and Warehouse
	Private Saw Mills and Lumber Yards Incline
	Egg Case Fillers
Yards	Coal
	Shuttle Blocks Gasoline
	Electricity Stock Yards
ad, McKinney Co	City Pumping Station Wholesale Dry Goods, Notions, etc.

Commissioner Meyer: We will stop at this point and resume again at two o'clock.

Whereupon at 12:45 o'clock a recess was taken until two o'clock p. m.

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AFTER RECESS.

TWO O'CLOCK P. M.

W. P. Bruce resumed the stand.

Commissioner Meyer: I believe you had asked the

question, but the witness had answered it.

Mr. Jouett: Please state whether the interchange of switching with the Tennessee Central Railroad favorably or unfavorably affects the operation of the Nashville Terminals.

Mr. Bruce: It affects us unfavorably for the reason that the facilities of the Nashville Terminals are overtaxed in the handling of the business of the Louisville & Nashville and Nashville, Chattanooga and St. Louis Railway, and any switching that we might do for the Tennessee Central, or any other railroad, would only add to our troubles. In other words the switching of the Tennessee Central business at the present time is a burden on these terminals, and if the volume of that business should be increased by throwing open the terminals to all business, or be increased from any other cause, or difficulties would simply be multiplied.

Mr. Jouett: Please explain how the switching of the Tennessee Central business adds to the difficulties of the Nashville Terminals, or in other words why is it more

onerous on the Terminals to switch business for the Tennessee Central, or the Louisville & Nashville and Nashville, Chattanooga & St. Louis road?

Mr. Bruce: As previously explained all of the city business has to be handled through the Kayne Avenue train yards, and any business arriving via the Louisville & Nashville or Nashville, Chattanooga & St. Louis is delivered direct with one movement to the assembling yard in the outlying district, whereas in the case of the Tennessee Central business received at the interchange track at Shops Junction has to be moved to the Kayne Avenue yards and from there to the assembling yard of the district to which destined, and from the assembling yard to the final destination, and as we have no return loading for the Tennessee Central cars we have to make the same number of movements to return the empty, whereas in case of cars arriving via the Louisville & Nashville or Nashville, Chattanooga & St. Louis we get a return load

either from the consignee of the inbound load, or somebody else in his vicinity, and consequently there is no return empty movement, except in case of coal cars. To a great many of the industries located in the Nashville Terminals it requires more moves of switch engine and crew to get a car from the Tennessee Central interchange

to an industry than to get the same car from the 433 break-up yards of the Nashville Terminals to the same industry. In other words whichever way you take it, the handling of Tennessee Central cars in switch movement in the Terminals involves more terminal service and work and expense than in handling cars of the Louisville & Nashville and Nashville, Chattanooga & St. Louis. I can illustrate this extra work by some maps which I have had prepared, and will file as exhibits to my testimony.

Mr. Jouett: We will file this map as Exhibit No. 10. (The map in question so offered and identified was received in evidence and thereupon marked Defendant's Exhibit No. 10, Witness Bruce, received in evidence March 26th, 1914, and is attached hereto.)

Mr. Bruce: Now, this map shows in red the route traveled by a car switched from the Tennessee Central connection track to the Heuhoff Abbatoir on Front Street, location No. 192.

In that movement the car would be shunted or classified from the connecting track or classification track at Shops Junction and moved from there to Kayne Avenue yards, which would count one movement, and there it is again classified and moved from there along with other

cars to the assembling yard in East Nashville, loca-434 tion 107, making two movements, and there it is

again classified and moved among other cars to the destination 192, making three movements to make the delivery, and requiring the same number of movements to return the empty car.

Mr. Jouett: Right there let me ask you this question: Do you, in speaking of the moves of a car, include the shunting or classifying of the car at the various yards or

breaking-up places?

Mr. Bruce No, sir; that is not included. We count as a movement the movement from one classification to another, or from the train yard-assembling yard, I should say.

Mr. Jouett: And it is a fact that at each of these assembling places the train taking the car is broken up and a new train or cut of cars made up to go to the next

Mr. Bruce: Yes, sir. I will explain that when the car reaches Kayne Avenue the engine bringing it there will have cars going in several other directions, and the car for Neuhoff Abbatoir would be switched on with other cars going to the assembling yard in East Nashville. Then when that car gets over in the assembling yard in a cut with other cars, to several destinations in different

directions from that assembling yard, and that 435 makes it necessary to again classify the cars, and get the Neuhoff car, together with other cars going out on the Front Street track or the Adams Street track,

or in that direction.

Mr. Jouett: By classified do you mean the making up of a train and then forming a new train?

Mr. Bruce: Yes, sir. Mr. Jouett: Go ahead.

Mr. Bruce: Now, I will explain the movement of a car to the same destination arriving in a Louisville & Nashville train or a Nashville, Chattanooga & St. Louis train. After the classification it is moved from Kayne Avenue to assembling yard, location 107, making one movement, and from there to the location 192, making two movements, which completes the transaction. And if the car is not loaded back by the shipper, but is left for return load, no empty movement is required.

Mr. Jouett: Do I understand you, then, that the later movement there would be a total of two moves, whereas in the first movement you described there would be six

moves?

Mr. Bruce: Yes, sir; that is correct.

Here is another may we will file as Exhibit No. 11.

(The map in question so offered and identified was received in evidence and thereupon marked Defendants' Exhibit No. 11, Witness Bruce, received in evidence March 26th, 1914, and is attached hereto.)

Mr. Bruce: This map shows in red the route traveled by a car received from the Tennessee Central and switched to the tracks of Buchannan Brothers, in West

Nashville, location 581.

Now, the classifications that I have explained at the different assembling yards and at the point of connection is the same in all these movements, and to save time, if

it is agreeable, I will omit this.

That moves from Shops Junction to the assembling yard, location 522, and from there to its destination, location 583, making two moves and requiring two moves to return the empty.

Now, in the case of a car arriving in Louisville & Nashville or Nashville, Chattanooga & St. Louis trains in the Kayne Avenue yards it would require one movement to get it to the assembling yard in West Nashville. location 527, and one movement to get it to its destination,

location 583; no return movement being necessary. Mr. Jouett: Do I understand, then, that the 437 difference in the movements for that service are four movements where it comes over the Tennessee Central and two where it comes over the Louisville & Nashville?

Mr. Bruce: Four movements in the case of the Tennessee Central as against two in the case of the Louisville & Nashville and Nashville, Chattanooga & St. Louis.

This sheet filed as Exhibit No. 12, shows the route traveled and the movements made in moving a car from the Tennessee Central interchange track to J. P. Meredith's pole yard, location 143, East Nashville.

(The document in question so identified was received in evidence and thereupon marked Defendant's Exhibit No. 12, Witness Bruce, received in evidence March 26th,

1914, and is attached hereto.)

Mr. Bruce: It is first moved from Shops Junction to Kayne Avenue train yards, and from there to the East Nashville assembling yard and from there to Meredith's pole yard, location 143, making three movements and requiring the same number of movements to retain the empties, making 6 movements.

Mr. Jouett: Do the maps correctly show the 438 mileage or distance traveled by the car in these

various switching services?

Mr. Bruce: Yes, sir; there is a note that shows the distance in each movement in both instances, that is, in the case of the Tennessee Central, and the Louisville & Nashville and the Nashville, Chattanooga & St. Louis.

I file as Exhibit No. 13, a map showing in red a route traveled by a car from the Tennessee Central to the St. Bernard Mining Company, location 454. In this instance the car is moved from Shops Junction to Kayne Avenue train yard, from there to the Clay Street assembling yard, location 403, and from there to destination, location 454, making three movements, requiring the same number of movements to return the empty, making a total of six movements.

(The map in question was received in evidence and thereupon marked Defendant's Exhibit No. 13, Witness Bruce, received in evidence March 26, 1914, and is attached hereto.)

Mr. Bruce: In the case of a car arriving by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis the cars move direct from the Kayne Avenue train yard to Clay Street assembling yard, location 403, and from there to destination, location 454, making two movements.

Mr. Jouett: What is the distance that would be traversed in making the service where it comes in over the Louisville & Nashville or Nashville, Chattanooga &

St. Louis?

439

Mr. Bruce: 1.89 miles. Mr. Jouett: What is the distance traveled where the movement is made to or from the Tennessee Central?

Mr. Bruce: 10.24 miles, counting the return move-

ment?

Mr. Henderson: Do you count the return movement where it comes in over the Louisville & Nashville?

Mr. Bruce: No, sir.

I file as Exhibit No. 14 a map showing in red the route traveled by a car from the Tennessee Central to location 347 in South Nashville. That is a privately operated track; I forget the name of the concern; they handle building material. The car is first moved from Shops Junction to Kayne Avenue train yard and from there to the classification yard at South Nashville, location 339, and from there to destination, making the three movements and requiring the same number of movements to retain the car to the Tennessee Central, a total of six movements.

In the case of a car arriving by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis for the same consignee it is moved from Kayne Avenue train yards to the assembling yards at South Nashville and

from there to its destination.

Mr. Baxter: What points are you describing now and what moves?

Mr. Bruce: I have described a move from the Tennessee Central connecting track.

Mr. Baxter: Where is that located?

Mr. Bruce: At Shops Junction; we call it Shops Junction.

Mr. Baxter: And to what point now on the Louisville & Nashville Railroad?

Mr. Bruce: Location No. 347, in South Nashville.

Mr. Jouett: What is the total distance traversed in the switching from the Louisville & Nashville or Nashville, Chattanooga & St. Louis?

Mr. Bruce: 2.65 miles.

Mr. Jouett: Now, what is it if the switching is done to or from the Tennessee Central?

Mr. Bruce: 11.76 miles.

Commissioner Meyer: That is both ways?

Mr. Bruce: Both ways, yes, sir.

Mr. Jouett: Why do you have to take it both ways?
Mr. Bruce: The practice and rules require that we return empties switched for connections.

Mr. Jouett: You return empties?

441 Mr. Bruce: Yes, sir.

Mr. Jouett: That is the reason?

Mr. Bruce: Yes, sir.

Mr. Jouett: Now, you have filed five maps showing in detail the movements connected with the interchange of property of the Tennessee Central compared with the movement going to the same industries where the shipment comes from or is consigned over the Louisville & Nashville or Nashville, Chattanooga & St. Louis.

I will ask you if you have selected those as five typical movements to give a general view of the situation?

Mr. Bruce: I have selected those because they cover all the longest movements that we would have to make in switching the Tennessee Central business or our own to industries. That is, the industries selected are located at the extreme end of our industrial district.

Mr. Jouett: Inasmuch as you show the movements for the Nashville Terminals as well as for the Tennessee Central to those points does that present fairly the relative amount of service, distance and number of movements for all the switching, relatively speaking?

Mr. Bruce: Relatively speaking, yes, sir.

442 (The document in question so identified was received in evidence and thereupon marked Defendants' No. 14, Witness Bruce, received in evidence March 26th, 1914, and is attached hereto.)

Mr. Jouett: From your description of these movements are you able to form an average which would indicate the average number of movements involved in handling business for the Tennessee Central as compared with the number of movements involved in handling cars to and from the same locations for the Louisville & Nashville and the Nashville, Chattanooga & St. Louis?

Mr. Bruce: The average number of movements in the handling of the Tennessee Central business is 5.6 as against 2 for handling Louisville & Nashville and Nashville, Chattanooga & St. Louis, and that is equivalent to 2.8 moved in the handling of Tennessee Central business to every one move in the handling of business for the

Louisville & Nashville and Nashville, Chattanooga & St. Louis. It is these extra movements required in the handling of the Tennessee Central business that adds to our congestion, and any increase in the number of cars switched for them would simply mean that much more trouble.

Mr. Jouett: In these calculations, Mr. Bruce, of the number of moves required to place cars arriving via the Louisville & Nashville and Nashville, Chat-443

tanooga & St. Louis, you have not counted any return movement of the empty car, stating that the empty is left in the district where the consignee is located for loading by anybody who wants to use it. Please go more into detail in that matter and explain just why it is that you do not consider it proper to count any return move-

ment of empties in these instances.

Mr. Bruce: For the reason that we get a return load either from the consignee or someone in the same vicinity. and if we should move the car back to the train yards it would be a useless expense as we would have to move an empty car from some other district to the same point, thereby unnecessarily increasing the cost of switching. About the only exception is in case of coal cars which as a rule are returned empty to the mines, although we do sometimes get loading such as stone, lumber, brick, logs, 'cross ties, pipe, etc., for coal cars.

Mr. Jouett: In calculating the number of moves involved in switching for the Tennessee Central, however, you have in every instance counted in the return movement of the empty. Please explain just why you consider

that method of calculation right and proper.

Mr. Bruce: For the reason that we have no return loading for the cars, and the further reason that it is the rule generally recognized among the rail-444

roads that in the handling of cars of other roads in switch movements the cars must be returned; also, it is the general rule of the American Railway Association, of which the Louisville & Nashville and Nashville, Chattanooga & St. Louis are members.

Mr. Jouett: With reference to that \$2.00 switching charge which the Nashville, Chattanooga & St. Louis and Louisville & Nashville charged in interchange movement prior to the making of this joint arrangement, state whether or not that was absorbed by the railroads or was it paid by the shippers?

Mr. Bruce: My knowledge of that part of the transaction, Mr. Jouett, is second handed. I understood at the time from the agents that the charge was absorbed on competitive business, but not on non-competitive business.

Mr. Jouett: In your statistics given in the early part of your examination you spoke of a car, or so many ears, moved into and out of the city. Suppose a car comes from Louisville destined to some point in the south and passes through Nashville, how many times is that counted?

Mr. Bruce: That is counted twice; it is really handled but once.

445 Mr. Jouett: Explain why you do that and what your custom is.

Mr. Bruce: Well, we have to have a record of the arrival and forwarding of all cars, and we also use a record of arrival and departure in dividing the expenses between the two roads.

Mr. Jouett: The record then shows that the car is treated as two cars?

Mr. Bruce: Yes, sir.

Mr. Jouett: Now, what about the different movements. In rendering a switching service how do you treat a car there so far as your ordinary records go?

Mr. Bruce: I do not believe I understand the ques-

tion, Mr. Jouett?

Mr. Jouett: Suppose a car comes in over the Tennessee Central, and in switching that from the point of interchange to an industry upon the tracks of the Nashville Terminals, that is moved, say, in three different movements, is that counted as three different cars or not?

Mr. Bruce: No; it is counted only as one car, but we make a record of it by each different crew that moved

it from one point to another.

446 Mr. Jouett: Well, do you keep a different record of the movement of each different crew?

Mr. Bruce: We keep a record of every car moved by the different yard crews from one point to another. Now, we do not keep any records of the cars handled by what we call the break-up engines in the train yards. They are switching on one lead, classifying cars from one track to another, and make no record of the cars that they handle; but in all other movements from one yard to another each foreman makes a complete record of all the cars that he handles and shows for account of which road he is handling those cars, whether it is the Louisville & Nashville or the Nashville, Chattanooga & St. Louis.

Mr. Jouett: Did you take into account all of those records in determining the average cost of the switching service?

Mr. Bruce? Yes; we took those movement records into account in dividing up the expense as between through and city cars.

Mr. Jouett: Now, you have spoken of through cars and city cars. Is this switching service to industries

what you mean by city cars?

Mr. Bruce: Yes, sir.

Mr. Jouett: Now, this \$4.13 a car then, is that
what you consider to be the average cost, actual
cost of service in handling all cars to the industries?

Mr. Bruce: That is the actual cost as shown by our records, that is our accounts, of conducting the terminals for switching unloaded cars in the city of Nashville.

Mr. Jouett: And that does not include the overhead

expense?

Mr. Bruce: It makes no difference whether it is a long or short movement.

Mr. Jouett: What is that?

Mr. Bruce: We did not take the distance into ac-

count, just the cost of handling the loaded car.

Mr. Jouett: It is just dividing the total number of cars into the total expense for that portion of the work?

Mr. Bruce: That is it.

Mr. Jouett: And that does not take into account, I believe you stated, any overhead charges?

Mr. Bruce: No overhead charges except the five per

cent that I referred to in my direct testimony.

Mr. Jouett: I wish to direct your attention just for a moment in conclusion to this matter of congestion and

will get you to state to the Commissioner, particularly with reference to certain places, the difficulties that you are in in connection with this question and the difficulty of remedying it?

Mr. Bruce: The most serious congestion is in the

train yard, shown in green.

Mr. Jouett: To what map are you referring?

Mr. Bruce: This is Exhibit No. 7. It is necessary to handle all of the freight trains of both roads in and out of that particular place; it is very badly congested at each end of the yard. We have no drill tracks that we can use at either end without going out onto the main track, and our average movement of trains, as I stated, was a movement about every 7.6 minutes, and every road engine that is cut off of a freight train to go to the roundand stop the shunting of cars that long, and then every road engine that comes from the roundhouse to go onto house has to pass over the switches of the drill tracks

a train and take it out also interrupts the work in the same way, and all of the cars loaded by the industries in Nashville going out of Nashville must necessarily be brought into that yard to be put on the trains.

Mr. Gwathmey: Mr. Bruce, you are speaking now of the tracks just south of the terminal station

449 down here?

Mr. Bruce: We are speaking about the tracks between First and Sprice Streets.

Mr. Gwathmey: That is both north and south of the

Terminal station, is it not?

Mr. Bruce: The Terminal station sets about midway

of the yard, opposite the center of the yard.

Mr. Gwathmey: Is it not true that all of the traffic passing through Nashville by either the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Railroad Company from the north to the south, or vice versa, passes right through that next or funnel under the Terminal station here!

Mr. Bruce: It does.

Mr. Gwathmey: What about the possibility at any reasonable figure of securing any additional facilities in

that immediate territory?

Mr. Bruce: Well, that would be an enormously expensive proposition to consider the enlargement of those The territory on each side is almost completely built up with business houses and dwellings.

Mr. Gwathmey: Do you find any serious diffi-450 culty today in handling your cars and moving the traffic along that immediate territory, and particu-

larly including passenger cars?

Mr. Bruce: Well, we have no room in the freight yard or near the passenger station for storing passenger equipment; we have to handle our passenger equipment on tracks in the train sheds, store it there; frequently we have to run lay-over passenger equipment to the Nashville, Chattanooga & St. Louis shop yards to store.

Mr. Gwathmey: Do you not, as a matter of fact, clean all of your passenger cars right there at the Terminal

station building?

Mr. Bruce: Yes, sir; and a good many of them under the train shed, which is objectionable.

Mr. Gwathmey: Now, at what other points on these terminals do you encounter the most serious congestion?

Mr. Bruce: Well, our most serious congestion outside of the territory covered by green, the train yards, is on the main tracks. Our main tracks are frequently occupied for hours at a time by trains entering the yards,

delayed on account of our inability to receive them as fast as they arrive. In fact, while it was expected when those terminals were built, which was two or three years

I believe, before they were constructed and ready
451 for operation, that they would answer our purposes and enable us to take care of probably increased business for a number of years to come. We
have been operating under difficulties from the very beginning, and those difficulties have increased right along

as business increased.

Mr. Gwathmey: Is it not true that one serious congestion point is on the line of the direction of West Nashville near the Nashville, Chattanooga & St. Louis Railway shops and not far from what is known as Shops Junction?

Mr. Bruce: Yes, sir; the traffic is heavy between the shops and the train yards. Every road engine that goes out passes over that in the yard movement—passes over the main track in between these points in the yard movement, and every road engine that comes in passes that point, and then the road engine passes that point again. Then we have a good deal of movement in handling repair cars; and yard engines working to and from West Nashville and to and from the Clinton Street assembling yards.

Mr. Gwathmey: Mr. Bruce, you recall, do you not, going out to that point with me a day or two ago? Do you happen to remember about how many engines you saw actually operating just at that immediate section of

the time we went along there, in switching cars

452 backwards and forwards?

Mr. Bruce: Yes; we met—there were four yard engines arrived at that point all wanting to use the four track yard we have at Shops Junction, two of which are used as interchange tracks with the Tennessee Central.

Mr. Gwathmey: Does it ever happen that you are compelled to hold traffic on the outside of the city on

account of the congestion of the terminals?

Mr. Bruce: We have avoided holding traffic outside of the city, but we hold it on the main tracks within the city and we hold it on side tracks in the assembling yards or industrial tracks, wherever they are unoccupied; cut off inbound trains and store the cars until such time as we are able to get them in the train yard.

Mr. Gwathmey: Is that a common or uncommon oc-

currence?

Mr. Bruce: It is a common occurrence; it is a condition that we are having to fight all the time.

Mr. Jouett: That is all.

Commissioner Meyer: You may cross examine.

Mr. Henderson: Mr. Commissioner, I understand that Mr. Baxter has an agreement with the attorneys for the defendants to cross-examine Mr. Bruce on his cost

figures by interrogatories.

453 Mr. Jouett: That is correct, yes.

Mr. Henderson: If that will be allowed I will not go into cross-examination of that particular exhibit, if that is understood.

Mr. Jouett: It is all right.

Mr. Henderson: I have a few questions I would like to ask Mr. Bruce.

CROSS-EXAMINATION.

Mr. Henderson: Mr. Bruce, you have filed here exhibits ten to fourteen which show the number of movements required to switch a car reaching Nashville by the Tennessee Central and delivered to the Nashville, Chattanooga & St. Louis or Louisville & Nashville at Baxter Heights as compared to the number of movements on that same car reaching Nashville via the Louisville & Nashville or Nashville, Chattanooga & St. Louis. I believe you stated in conformity to Mr. Jouett's statement that you selected the longest switching movement in the terminal, is that correct?

Mr. Bruce: I am just going over in my mind locating the points. We have included the longest switching movements made in the terminals to reach an industry. We

have a longer movement to reach one of our team

454 delivery tracks at the race track siding.

Mr. Henderson: But you would not switch business to those team tracks for the Tennessee Central?

Mr. Bruce: No; we would not handle Tennessee Central business there.

Mr. Henderson: That is the largest switching movement you can find, then, to an industry?

Mr. Bruce: Yes, sir.

Mr. Henderson: Is it also a fact you picked out the cases that involved the greatest number of movements? Mr. Bruce: No.

Mr. Henderson: That is not so.

Mr. Bruce: No.

Mr. Henderson: Now, your Exhibit No. 7, will you look at that, please.

Mr. Bruce: All right, sir.

Mr. Henderson: You show there district number-

three terminal limits down in the left-hand corner on the Louisville & Nashville Railroad, the yellow line?

Mr. Bruce: Terminal limits, yes.

Mr. Henderson: No. 3. Now, what direction is the Louisville & Nashville Railroad coming into Nashville from that line? Is that coming from the south?

Mr. Bruce: That is coming from the south.

Mr. Henderson: Take a car coming in over the Louisville & Nashville Railroad from Birmingham going to the State Prison or some operator in the prison walls, how many switching movements would it take to get that car out to the prison?

Mr. Bruce: It would take two.

Mr. Henderson: Now, just explain that, please.

Mr. Bruce: From Kayne Avenue train yard to the assembling yard at location No. 527 at West Nashville and from there to the State prison.

Mr. Henderson: What is the distance, then, that you switch that car by that movement? How many miles is

it handled in the terminal limits?

Mr. Bruce: I will have to get one of my other maps to find that. The distance from Kayne Avenue train yard to assembling yard at West Nashville is 5.64 miles; from there to the prison is about a mile.

Mr. Henderson: Now, you carry that car through Baxter Heights and Shops Junction, would you not?

Mr. Bruce: Pass through there, yes.
Mr. Henderson: Pass through it?

Mr. Bruce: Yes, sir.

Mr. Henderson: And the extra switching haul is from Kayne train yard?

Mr. Bruce: Kayne Avenue train yard.

Mr. Henderson: Kayne Avenue train yard up to Baxter Heights or Shops Junction; that much farther?

Mr. Bruce: Yes, sir.

Mr. Henderson: Now, this car delivered to the Tennessee Central at Baxter Heights, going to the prison, how many switch movements are there in that?

Mr. Bruce: That car delivered to the Tennessee

Central?

Mr. Henderson: Not that car but the car delivered to the Tennessee Central at Baxter Heights going to the prison.

Mr. Bruce: Take the same number of movements; have to move it from the assembling yard to Baxter Heights and from there to the prison.

Mr. Henderson: The same number of movements?

Mr. Bruce: The same number of movements. Mr. Henderson: And a less distance hauled? Mr. Bruce: In that case less distance, yes.

457 Mr. Henderson: Now, you spoke of the expense and practical impossibility of increasing your terminal facilities here in Nashville on account of the residences and business houses around. I understood you said that would be very expensive and practically impossible to do!

Mr. Bruce: Yes.

Mr. Henderson: Now, is it not a fact that the Louisville & Nashville Railroad have been working and have partially completed a yard at what they call Radnor for handling all through business?

Mr. Bruce: Yes, sir; they are handling through busi-

ness there.

Mr. Henderson: And are they not working on that now?

Mr. Bruce: Yes, sir.

Mr. Henderson: Practically completed?

Mr. Bruce: Yes, sir.

Mr. Henderson: Then they have gone a good deal farther than figuring on it, have they not?

Mr. Bruce: Not so far as I know. The yards are

being built as they were first planned.

Mr. Henderson: Well, you said they were figuring on doing it. The work is actually under way now? Mr. Bruce: Yes, sir. 458

Mr. Henderson: When that yard is completed it will take all of the through business out of the terminal

district, will it not?

Mr. Bruce: Take it off of the old route and take it into the new route, except the Nashville, Chattanooga & St. Louis freight trains to the northwestern division will probably continue to use the present route through the city; I don't know about that.

Mr. Henderson: That will relieve the situation you

spoke of?

Mr. Bruce: It will relieve the congestion occasioned by the through trains in the Kayne Avenue train yards.

Mr. Henderson: And relieve the railroad from the necessity of increasing these terminals down town to a large extent, will it not?

Mr. Bruce: It will relieve them of the necessity of

increasing the Kayne Avenue Terminals, yes.

Mr. Henderson: That is the downtown terminals? Mr. Bruce: That is not all there is down town; that is not what we call the downtown terminals, that is our

train yard, the clearing house of through and city business.

459 Mr. Henderson: It will take all this through business away from there?

Mr. Bruce: It takes all the through business away from that particular yard, yes, and puts it in Radnor.

Mr. Henderson: Now, I understood you to say that all of the tracks, industrial tracks, and all tracks in the terminal limits, as you call the Nashville Terminals, are operated jointly by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, and each one has equal rights on all tracks, is that correct?

Mr. Bruce: That is a fact, yes, sir.

Mr. Henderson: Is it not a fact that the Louisville & Nashville Railroad have reserved for their own individual use what they call their produce track on Criddle Street?

Mr. Bruce: Well, there are three exceptions. Mr. Henderson: I wish you would give those.

Mr. Bruce: Each road reserves for its own use a freight depot and the team tracks adjacent to them, and the Louisville & Nashville also reserves the team delivery tracks at College Street for its use and the side tracks serving the East Nashville Freight depot.

Mr. Henderson: Now, is it not a fact that the College Street track that you have just mentioned is not strictly speaking a team track delivery?

Mr. Bruce: Yes; it is a team track delivery. There are several—there are one or two coal dealers and packing companies that lease property that carries with it the privilege of the track adjoining it. The business of both roads is handled on those tracks.

Mr. Henderson: Is it not a fact that the Louisville Company have a produce house on that track and the Louisville & Nashville makes delivery for them of all produce coming over the Louisville & Nashville?

Mr. Bruce: Yes, sir.

Mr. Henderson: Is it not a fact that the Louisville & Nashville will not make delivery of produce coming over the Nashville, Chattanooga & St. Louis?

Mr. Bruce: Yes, sir; it is.

Mr. Henderson: Do you know who has leased that

property on that particular track?

Mr. Bruce: Armour one—I think he has transferred his to a local concern, the Nashville Beef & Provision Company; I think they occupy the property, and Swift on

the other end and I think it is a Mr. Lester and somebody who leases a coal yard over there.

Mr. Henderson: They lease that property from the Louisville & Nashville Railroad or from private owners?

Mr. Bruce: From the Louisville & Nashville.

Mr. Henderson: Who gets the rent on that, the Louisville & Nashville Railroad or the Nashville Terminals?

Mr. Bruce: The Louisville & Nashville.

Mr. Henderson: Now, is it not a fact that a good many of the industries in Nashville have built their own

industrial tracks at their own expense?

Mr. Bruce: Yes; I believe we have in the territory covered by both Louisville & Nashville and the Nashville, Chattanooga & St. Louis nine tracks that are privately owned.

Mr. Henderson: Owned outright?

Mr. Bruce: Owned outright by private parties. Mr. Henderson: Kept up by the individuals?

Mr. Bruce: Well, we maintain them, but they pay

the bills; kept up at their expense.

Mr. Henderson: Now who do they pay that to, the Louisville & Nashville Railroad or to the Nashville Terminals?

Mr. Bruce: The cost of maintenance—well, it is according with the individual owner of the tracks. In the territory in which these private tracks are located

462 they get the bill-they get the rental, but we-

Mr. Henderson: Just one minute. If it is on the Nashville, Chattanooga & St. Louis property and connected with their individual tracks, does the Nashville, Chattanooga & St. Louis get the money that they pay for keeping up that track?

Mr. Bruce: They get the money and we charge the Nashville, Chattanooga & St. Louis direct for the work.

Mr. Henderson: And if it is on the Louisville & Nashville the Louisville and Nashville gets it.

Mr. Bruce: The Louisville & Nashville gets it and

we charge them for our labor and work.

Mr. Henderson: Those contracts for the private sidings on the Louisville & Nashville terminals have to be sent to Louisville and approved and made there, do they not?

Mr. Bruce: Yes, sir.

Mr. Henderson: The Nashville Terminals have no

authority over it at all, have they?

Mr. Bruce: Well, in some instances we-no; I would not make a contract out with the approval of the management of the Louisville & Nashville regarding a matter in that territory, nor, would I make a contract in

463 connection with a matter in the Nashville, Chattanooga & St. Louis territory without their approval.

Mr. Henderson: You have no authority as the joint agent. Whenever you want to be joint agent, or as an individual agent when you want to be an individual agent, to make a contract of that kind.

Mr. Jouett: We object to that style of examination as not being proper. The witness has not said that he wants to be sometimes the individual agent and some-

times the joint agent.

Mr. Henderson: The witness testified he acted at times as joint agent and at times as the individual agent? Mr. Jouett: He did not say when he wanted to be.

Mr. Henderson: If you will allow me, I will change

the question, Mr. Commissioner.

Commissioner Meyer: You may change your question. Mr. Henderson: I will ask the Stenographer to cut

out that and put this question:

You testified this morning that at times you acted as the joint agent of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway and

at other times you acted as the individual agent of
both companies. Regardless of how you are acting
you have no authority to make a contract of that
kind without approval from the Louisville & Nashville
or Nashville, Chattanooga & St. Louis, as the case may
be?

Mr. Bruce: Well, in regard to making contracts in connection with a track in the Louisville & Nashville territory I would be acting as their direct representative in that matter.

Mr. Henderson: But you would have no authority to make a contract without approval from the Louisville office?

Mr. Jouett: He does not specify what kind of a con-

tract.

Mr. Bruce: My authority does not go so far as purchasing property or building tracks without the approval of the management, but those matters are nearly always passed upon according to my recommendations in the matter.

Mr. Henderson: You make a recommendation?

Mr. Bruce: Yes.

Mr. Henderson: That is as far as you can go, is that correct?

Mr. Bruce: In that particular respect, yes, sir.

Mr. Henderson: I do not know whether I understood you to say this morning or not that there was no tariff

authorizing the switching of competitive traffic reaching Nashville by the Tennessee Central and 465 destined to industries on the Nashville Terminals by either the Louisville & Nashville or Nashville, Chattanooga & St. Louis. Was that your statement?

Mr. Bruce: That was my statement, yes, sir.

Mr. Henderson: You say there are no tariffs authorizing it?

Mr. Bruce: There are no tariffs authorizing it.

Mr. Henderson: Do you know as a matter of fact you do perform this switching at these competitive switching rates testified to here?

Mr. Bruce: I am not aware of it having been done since the cancellation of the local rates published in the

Nashville, Chattanooga & St. Louis local tariff.

Mr. Henderson: Do you not know as a matter of fact that less than two weeks ago there was a car of fertilizer material that came in here from Sabine, Texas, to the Tennessee Chemical Company which was switched to West Nashville and a switching charge of \$18 was as-

Mr. Bruce: I have no knowledge of any transaction of that kind, Mr. Henderson. Those matters are looked after by the agents.

466 Mr. Henderson: You would not know, then, whether the switching was being performed at these competitive rates or not?

Mr. Bruce: Not unless my attention was called to it

by the agents.

Mr. Henderson: And unless your particular attention was called to it you could not say whether or not they are charging those rates or whether they are not charging

Mr. Bruce: No.

Mr. Henderson: You do not know anything about that?

Mr. Bruce: No, sir.

Mr. Henderson: Now, the switching bills which are made against these consignees on the Nashville, Chattanooga & St. Louis and Louisville & Nashville or the Nashville Terminals for competitive switching or non-competitive switching, are those bills made in the name of the Nashville Terminals or the name of the particular road on which they are located?

Mr. Bruce: The switching at the switching rate, three dollars, I don't know how the bills read or whether made by the Louisville & Nashville or the Nashville, Chattanooga & St. Louis or by-they could not be made by the

Nashville Terminals, because they have no forms 467 covering anything of that kind, but the Terminals gets the benefit of that revenue on the business switched at the \$3 rate. On business switched on any other rates I am not able to say; I think the Nashville, Chattanooga and St. Louis absorb that; that is, they get that revenue; they did get it, rather, when there was such switching done; that isn't done now.

Mr. Henderson: I understood you to say just now you didn't know whether it was done or not, and you would not know it unless it was called to your attention.

Mr. Bruce: I said I did not know about any particular car that was done; I don't know. I do know about the particular arrangements put into effect between the agents to govern these matters, and I am not aware whether they have handled a single car of competitive business or non-competitive business at any particular time. The only thing I am interested in in that connection is the revenue the Terminal should have. We should have a revenue on the car switched at three dollars in the switching service. Now, if they have been handling business at any other rates they may have been getting the revenue.

Mr. Henderson: In other words, if they charge \$3 for switching the Terminal Company gets it and if they charge \$18 the Louisville & Nashville or Nashville, Chattanooga & St. Louis would get it?

Mr. Bruce: I suppose so.

Mr. Henderson: Mr. Bruce, I understood you to testify this morning that the volume of business handled

would tend to lower the cost of switching.

Mr. Bruce: It would tend to lower the cost of handling cars in the train yard, the increased volume would; it would not materially tend to reduce the cost of switching cars between the train yards and industries because we cannot handle many cars per engine per day in that kind of service.

Mr. Henderson: Would it not tend to decrease the

entire cost and the switching cost along with it?

Mr. Bruce: No; it would increase the cost of switch-

ing city cars; naturally so.

Mr. Henderson: It would cost you then more to handle, say, 75 cars a day out to West Nashville, more per car, than it would 25, is that correct?

Mr. Bruce: Some more, yes.

Mr. Henderson: It would cost you more to handle 75 cars per day out to West Nashville per car than it would to handle 25?

Mr. Bruce: Yes; it would increase the cost some 469 per car.

Mr. Henderson: I wish you would explain why that

is so.

Mr. Bruce: Well, for the reason I just gave you, that we cannot handle many cars in a run; we make long runs from point to point in handling city business and the engines handling that business are delayed by the heavy main line traffic and further delayed by congestion conditions in the assembling yards and in the district yards, where the one engine has to wait while the other is making the switching movements.

Mr. Henderson: Well, take the movement from your Kayne Avenue yards at West Nashville, how many cars

can you handle out there at one switching?

Mr. Bruce: Well, some of our engines handle about

twelve loads and some about 18, going west.

Mr. Henderson: Now, according to your theory, as I understand it, it would cost you more per car to handle

18 than it would to handle 9?

Mr. Bruce: Well, what I mean by that is when you increase your volume of city business you increase the delay in the handling of that particular business because of the long distance moved; you decrease the cost by the increase in the volume of business in a train yard where

one engine is working continuously without such

470 long interruptions.

Mr. Henderson: Even at that it would tend to de-

crease your total terminal cost, would it not?

Mr. Bruce: Well, the cost of handling the through cars is not as great a part of the cost as the handling of city cars; it is the city cars that cost the most money

Mr. Henderson: Now, you stated this morning that you would double the mileage on Tennessee Central cars delivered you at Baxter Heights and did not double it on Louisville & Nashville cars and Nashville, Chattanooga & St. Louis, because you had a return load on the Louisville & Nashville and Nashville, Chattanooga & St. Louis, is that correct?

Mr. Bruce: Yes, sir; that is correct.

Mr. Henderson: Is it not true that you very frequently have return loads in the Tennessee Central cars?

Mr. Bruce: We have very little business originating on our tracks going to the Tennessee Central Railroad. There might, of course, be instances in which a very small proportion of those cars will get a return load.

Mr. Henderson: Do you not know, as a matter of fact, that they are not all returned empty?

471 Mr. Bruce: Well, if they are not, I don't know it. Mr. Henderson: You do not know it?

Mr. Bruce: No.

Mr. Henderson: Now, you also mentioned this morning the fact that the more switching you had to do on cars received from the Tennessee Central Railroad made that much extra switching and that much extra expense to your terminals at Nashville.

Mr. Bruce: That is due to having to make more movements in the handling of your cars than we do in the

handling of our own.

Mr. Henderson: That is true then?

Mr. Bruce: Yes, sir.

Mr. Henderson: Is that condition peculiar at Nashville, or would it exist at Memphis, New Orleans, Birmingham and Chattanooga?

Mr. Bruce: I know nothing about the situation at

the other points.

Mr. Henderson: You have been in the railroad business quite a number of years, Mr. Bruce, and I understand you have had considerable experience in the transporta-

tion department. Do you not know as a matter of fact that that condition is not peculiar to Nashville? Mr. Bruce: No; I have no knowledge of the condi-

tion at other points. It is due to-

Mr. Henderson: You do not know anything about the condition at-

Mr. Jouett: Let him finish. You were in the midst of a sentence, Mr. Bruce.

Mr. Bruce: No; I say I have no knowledge of the

conditions in that respect at other points.

Mr. Henderson: Now, in your testimony this morning you gave some statistics there and referred to Poor's Manual as your authority. Do you consider that a standard work and authority on matters of that kind?

Mr. Bruce: Yes, sir.

Mr. Henderson: Your attorneys objected to my using it yesterday and I wanted to get your opinion about it.

Mr. Jouett: I think I asked you where you got it. Mr. Henderson: The record will show you objected to it.

Mr. Jouett: I do not think I objected to Poor's Man-

Commissioner Meyer: Well, counsel can probably agree that it is as authoritative for one side as it is for the other.

Mr. Jouett: Yes, sir; we will agree to that. Mr. Henderson: That is all I wanted to show, 473 Mr. Commissioner.

Now, Mr. Bruce, you filed an exhibit here showing the car capacity of the various industries located exclusively on the Nashville Terminals; you also showed the car capacity of the industries located on the Tennessee Central exclusively. Now, where did you get your figures for the Tennessee Central car capacity? Are you familiar with all those locations?

Mr. Bruce: Some of our clerks and engineers went around, I believe, and measured them up and looked them

Mr. Henderson: They went around to survey those and measured them, did they?

Mr. Bruce: That is the way the information came to

me, yes, sir.

Mr. Henderson: Now, you spoke of the superiority of the Nashville Terminals over the Tennessee Central Terminals, I believe.

Mr. Bruce: In what respect, in the car capacity? Mr. Henderson: As to having the car capacity and more industries and ability to do more business?

Mr. Bruce: Yes, sir.

Mr. Henderson: You show there 3340 car ca-474 pacity—your Exhibit 7—that is the joint terminal facilities of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, is it not?

Mr. Bruce: Yes, sir.

Mr. Henderson: Now, Mr. A. R. Smith, the Third Vice President of the Louisville & Nashville Railroad, in a letter to me, which I filed as my Exhibit No. 8, stated that the individual facilities of each of the two lines, speaking of the Louisville & Nashville and Nashville, Chattanooga & St. Louis, within the Nashville switching limits are approximately equal. Do you agree with Mr. Smith?

Mr. Bruce: I didn't figure out how much belongs to the Nashville, Chattanooga & St. Louis and how much belongs to the Louisville & Nashville. In fact, I did not figure that out myself. That information was gotten up by the engineers and I have not examined it.

Mr. Henderson: You would be willing to accept Mr. Smith's statement as to facts, would you not, or wouldn't

Mr. Bruce: Certainly I would be willing to accept his statement, but he might be mistaken as to the facts.

Mr. Henderson: Do you know of your own knowledge whether they are approximately equal or not?

475 Mr. Bruce: I believe the information contained on this sheet is approximately correct.

Mr. Henderson: I am not speaking about that; I mean are the facilities practically equally divided between the Louisville & Nashville and Nashville, Chattanooga & St. Louis?

Mr. Bruce: Do you mean individually owned?

Mr. Henderson: I mean owned or leased or anything else.

Mr. Bruce: Individually owned?

Mr. Henderson: Yes.

Mr. Bruce: I think in mileage very nearly equal, yes, sir.

Mr. Henderson: In car capacity.

Mr. Bruce: Referring to what we refer to as the Nashville Terminals property, the facilities of the two companies outside of that territory are practically equal.

Mr. Henderson: Then the individual facilities of each line would be of a car capacity of 1670, is not that right, one-half of 3340?

Mr. Bruce: I will accept your figures.

Mr. Henderson: Now, the car capacity of the tracks of the Tennessee Central Railroad is 1617?

Mr. Jouett: Where do you get the 1617?

Mr. Henderson: 617 I should have said. I am reading from your exhibit 7. If you were to pool the terminal facilities of the Tennessee Central and either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis then they would have superior facilities to either one of the other lines, would they not?

Mr. Jouett: We will suggest that is altogether a

matter of mathematics; it is all shown.

Mr. Henderson: I think, Mr. Commissioner, I have a right to bring this out.

Mr. Jouett: It is taking up time.

Commissioner Meyer: The witness may answer.

Mr. Bruce: What is the question, please?

Mr. Henderson: If you take the individual facilities of the Louisville & Nashville Railroad and pool them with the facilities of the Tennessee Central Railroad then those joint terminals would be superior to the Nashville, Chattaneoga & St. Louis, wouldn't they?

Mr. Bruce: In car capacity, yes.

Mr. Henderson: Yes. That same thing would be true anywhere else where every road but one pooled their facilities, the pooled facilities would be greater than most any other road, would it not?

Mr. Bruce: In so far as the car capacity, yes;

but still in way of operation and service I say no.

Mr. Henderson: You do not say it would not be possible for them to make an arrangement whereby they could operate as economically as they are now doing, do you?

Mr. Bruce: Well, they might if one company switched for all companies, all owners, one railroad company.

Mr. Baxter: Mr. Bruce, did you not at one time here

operate the Terminal Company separately?

Mr. Bruce: I was connected with the Louisville & Nashville as Assistant General Yardmaster in 1899 when the roads were operated separately, yes, sir.

Mr. Jouett: Will you read that question?

(Question read by the Reporter.)

Mr. Jouett: The Terminal Company?

Mr. Bruce: That is the terminal facilities were operated separately.

Mr. Jouett: Read the question.

(Question repeated by the Reporter.)
Mr. Bruce: Well, I understood you meant by that

that the two roads operated their terminal facilities here separately. That is what I meant by my answer. The Terminal Company, the Louisville & Nashville Terminal Company's property has not been operated separately from anything they do not operate anything.

Mr. Baxter: No; but in operating the Terminal Company the Nashville, Chattanooga & St. Louis and the Louisville & Nashville use the terminal properties in making these deliveries, do they not, to one another?

Mr. Bruce: You mean as between the two roads?

Mr. Baxter: Yes.

Mr. Bruce: There is not any deliveries made as between those two roads.

Mr. Baxter: I say at one time.

Mr. Bruce: Oh, they did previous to the organization

of the Nashville Terminals, yes.

Mr. Baxter: Well, after the Nashville Terminal was built and the property was purchased and put in operation, in making a delivery, we will say, from common station to Carter Shoe factory, was not the Terminal property used in making that delivery?

Mr. Bruce: The Nashville Terminals made the delivery over the tracks of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis to

reach Carter's shoe factory, and it may have passed over some of the property belonging to the Louisville & Nashville Terminal Company. I could not say about that.

Mr. Baxter: It does today, does it not?

Mr. Bruce: The same thing as I have just described,

yes, sir.

Mr. Baxter: And it does not matter whether it is the Louisville & Nashville engine that takes that car at the station or Nashville, Chattanooga & St. Louis engine that handles it?

Mr. Bruce: No, sir.

Mr. Baxter: In fact, your Nashville, Chattanooga & St. Louis engines do as much switching in the Louisville & Nashville Railroad yards as do the Louisville & Nash-

ville Railroad yard engines proper, do they not?

Mr. Bruce: I can probably explain that, Mr. Baxter, better by saying that "each road, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, assigns its proportion of the engines needed for yard service to the Nashville Terminals, and we use those engines regardless of whose business they are handling or whose tracks they are working on."

Mr. Baxter: And you use them regardless of

location?

480

Mr. Bruce: Or regardless of location, yes.

Mr. Baxter: So a Louisville & Nashville engine will switch in the Nashville, Chattanooga & St. Louis yard on its private tracks and it will switch on the Louisville & Nashville private tracks and it will handle a car on the terminal tracks?

Mr. Bruce: Yes, sir.

Mr. Baxter: And the same is true of the Nashville, Chattanooga & St. Louis Railway?

Mr. Bruce: Yes, sir.

Mr. Baxter: How far is Carter's shoe factory from Cummins stations?

Mr. Bruce: I will have to figure that. From Cummins station to Carter shoe factory?

Mr. Baxter. Take the station for your first mile post.

Mr. Bruce: It is approximately 2.08 miles.

Mr. Baxter: Now, will you describe to me the property over which a movement would be from Common station to Carter's shoe factory?

Mr. Bruce: Well, in that case it would pass over the property—you want to know whose property it passes over?

481 Mr. Baxter: Yes.

Mr. Bruce: It would pass over some of the property we refer to in operation as belonging to the Louisville & Nashville Terminal Company and leases to the Louisville & Nashville and Nashville, Chattanooga & St. Louis, but as a matter of fact some of that property is individually owned by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, and that I could not say as to whether it would pass over that or not; but after it leaves the property of the Louisville & Nashville Terminal Company it passes over the property of the Louisville & Nashville Railroad only.

Mr. Baxter: So it would pass over part of the Louisville & Nashville Terminal Company's property and the Louisville & Nashville Railroad proper property?

Mr. Bruce: Yes, sir.

Mr. Baxter: In that instance?

Mr. Bruce: Yes, sir.

Mr. Baxter: Now, take a movement from Common Station to your No. 3 delivery point in South Nashville yard, and over what property would it pass?

Mr. Bruce: From Common Station?

Mr. Baxter: Yes.

482 Mr. Bruce: Well, that would pass over the Louisville & Nashville Terminal Company with the same explanation that I made in the other instance, and going out-

Mr. Baxter: Going south?

Mr. Bruce: Going south we pass over the Louisville & Nashville Railroad Company property. Now, each road-

Mr. Baxter: Just a moment, let me get this straight there. It would also pass over a piece of track there of the Nashville, Chattanooga & St. Louis.

Mr. Bruce: I was going to explain that.

Mr. Baxter: That is what I want.

Between South Spruce Street and Oak Mr. Bruce: Street is Liberty Mills. Each road owns one track. We operate those two tracks as double tracks for the use of both roads.

Mr. Jouett: Who do you mean by "we"! Mr. Bruce: The Nashville Terminals.

Mr. Baxter: You described this morning after I came in here the great disadvantages to which the movements and the terminal yards were now put. I believe Mr. Henderson asked you if the yard when completed at Radnor would relieve this to a great extent.

Mr. Bruce: It will relieve what we now use as 483 a train yard; it will have no effect in relieving any other part of the facilities. It will relieve the main line movements between Maplewood and Overton to the extent of taking the movement of freight trains off the main lines.

Mr. Baxter: You say your main line movement? You bring no trains into Nashville, with a few exceptions, do you, that you do not have them put in the break-up yard to set out the cars that are destined to Nashville or to Chattanooga or, we will say, in a train that is destined from Cincinnati to New Orleans?

Mr. Bruce: All our cars for both roads and all that we gather up in the city are handled through the Kayne

Avenue trainyards?

Mr. Baxter: Yes, sir; and you have your break-up yards there and make up your trains and carry them out to different destinations, to Chattanooga, we will say, Atlanta, and Birmingham?

Mr. Bruce: Yes, sir.

Mr. Baxter: Now, the Louisville & Nashville have under construction, have they not, what is known as the cut-off, Lewisburg and Northern Railway?

Mr. Bruce: Yes, sir.

Mr. Baxter: That railroad circles the city? 484

Mr. Bruce: Yes, sir.

Mr. Baxter: Does not enter the Terminal yards at all, does it?

Mr. Bruce: No; it does not enter the present terminal facilities at all.

Mr. Baxter: That road is constructed for the pur-

pose of handling the through traffic, is it not?

That is the principal reason that they Mr. Bruce: are constructing it, is to handle the through traffic and to reduce the delay about their through traffic in handling it through their present yards, and to get the benefit of the low grade line that they are building from Radnor south, which they could not if they brought it down to Nashville in this dip.

Mr. Baxter: In any event, it will relieve the terminal yards located here in Nashville of practically all of the

through traffic?

Mr. Bruce: Yes; it will relieve it of the through traffic.

Mr. Baxter: And in that event, so far as the Louisville & Nashville Railroad is concerned, that yard will be amply sufficient to handle the business of the break-485

up and the local city business?

Mr. Bruce: That will not relieve the situation in handling the city business that we have to assemble in

the assembling yard in East Nashville, Clay Street or South Nashville. There is a possibility, at a pretty heavy expense, of increasing the capacity of the East Nashville assembling yard, but at Clay Street to make any increase there would be at a very heavy expense, and the same thing at South Nashville, and it s those facilities, Mr. Baxter, that we use in the distributing and assembling of the business to and from Nashville.

Mr. Baxter: Why is it so expensive in your South Nashville yards? Take it from your western track, and going east, why is that property se valuable out there

that you got for nothing?

Mr. Bruce: Well, we abutt up now on Cherry Street on the east, Cherry and Chestnut, and run into Nagley on the west; we would have to move a hill, or mountain, out there.

Mr. Baxter: You say you butt in there. You butt into a warehouse by side track only, and you have all that property there that is accessible and cheap that you can buy and put it in line with Cherry Street. That is not

expensive, is it?

486 Mr. Bruce: Well, you could not locate but one industry on that; we could not cover it with tracks. If we did, it could only be used for team tracks or storage tracks; we couldn't locate any industries on it.

Mr. Baxter: That would relieve your yard to a cer-

tain extent, though, would it not?

Mr. Bruce: Not as I look at it, Mr. Baxter; that would

not afford any relief.

Mr. Baxter: Well, you are fully well aware, are you not, that the Nashville, Chattanooga & St. Louis Railroad is also trying to get out of the Terminal on its business on Memphis, say, to Atlanta, by going around the city, and it has had its line surveyed for that purpose also, has it not?

Mr. Bruce: I believe I have heard something about

that, yes, sir.

Mr. Baxter: When that is perfected then all through business both over the Nashville, Chattanooga & St. Louis and the Louisville & Nashville Railroad will be taken away from the yards here in Nashville, will it not?

Mr. Bruce: Be taken away from the present yards,

yes, sir.

Mr. Baxter: What per cent of the through business is there that comes into the yard and is broken up and re-switched in the terminal yards here as compared to the total amount of business brought into Nashville, into the terminal?

Mr. Bruce: Exhibit No. 8 will show that, Mr. Baxter.

Mr. Baxter: Have you filed in this case—I was not here when you were first put on and I do not know—an exhibit showing the actual cost to you of each of the movements made in making these switches.

Mr. Bruce: We have not shown the cost for movement; we have shown the cost for handling a loaded car?

Mr. Baxter: Well, I will ask you to please file an exhibit in this case showing the items going to make up the actual cost to you of the movement of the delivery of a car to the Louisville & Nashville in East Nashville to a delivery strictly at Baxter Heights to the Tennessee Central, and a delivery strictly to a Chattanooga point on the Nashville, Chattanooga & St. Louis, not to the Abbatoir, where there are numerous other movements.

Mr. Bruce: This cost we have shown, Mr. Baxter, is

the average cost of handling a loaded car.

Mr. Baxter: Then let your exhibits show the items going to make up that actual cost.

Mr. Jouett: He said average cost.

Mr. Bruce: Average cost.

488 Mr. Baxter: Well, I want the actual cost of those three particular movements.

Mr. Bruce: Mr. Baxter, that is as near actual as it

would be possible to get from the record.

Mr. Baxter: No; I beg to differ with you. We made the actual tests in the St. Louis Hay and Grain Case and had every item shown in it and it was considerably less than it is here.

Mr. Jouett: We object to that going into the record.
Mr. Baxter: It is a record in the United States Su-

preme Court.

Mr. Jouett: It is not proper for you to state the value

somewhere else.

Mr. Baxter: I am merely assisting the witness to enable him to get the data that is approved by the Supreme Court.

Mr. Jouett: I object to that part of that statement where you say it is shown to be considerably less than it

is here. That is wholly improper, we think.

Mr. Baxter: In order to enable you to find out the items that went into the estimate which was made by one of the defendants, Mr. Jouett's road itself, you will find

it both before the Commission in the St. Louis Hay & Grain Company against the Louisville & Nashville Railroad and also the St. Louis Hay & Grain Company in the Supreme Court of the United States against the Southern Railway, and I would like for you to prepare a statement showing these items in detail as

to the actual cost of movement on the switching business. Mr. Bruce: The exhibits filed, Mr. Baxter, contain the actual average cost, averaging the cost of the long distant haul and the short distant haul, as near as it is possible to get it.

Mr. Baxter: Well, you can furnish that or not as

you see proper. I just ask for that.

Now, this morning, Mr. Bruce-have you ever had any experience in making rates?

Mr. Bruce: No. sir.

Mr. Baxter: Then you are not competent to state whether or not these terminal charges are taken into consideration in the fixing of a rate into or out of Nash-

Mr. Bruce: I am competent to this extent, Mr. Baxter, that I do not see how the cost of the service could have been gotten without information from me or from my office, and the information would not have gotten out

of my office without my knowledge.

Mr. Baxter: That is not an answer to my ques-490 tion. My question is whether or not you are sufficiently versed in traffic matters to enable you to make a

Mr. Bruce: No; I do not know anything about making rates; no, if that is what you are driving at.

Mr. Baxter: Then you do not know whether they

are taken into consideration or not?

Mr. Bruce: I do not know, but I have pretty good

reasons to think they have not been.

Mr. Baxter: You can think anything you please, but you really don't know anything. Now, Mr. Bruce, you spoke of the breakage. Have you got a report showing the breakage in the terminal yards which you have charged up against the cost of operations of that yard

Mr. Bruce: Our records show the cost of repairs to equipment damaged in the terminals, but whether it is chargeable to, -well, it would be chargeable to us if it is damaged in the terminals, unless it is damaged by the carelessness of a Louisville & Nashville or Nashville, Chattanooga & St. Louis crew, and it shows the amount that we paid out by voucher in settlements of claims for

which the terminals are responsible.

491 Mr. Baxter: Who determines the responsibility of that loss, the Terminal Company, the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Railroad Company.

Mr. Bruce: In the case of settling a claim?

Mr. Baxter: Yes.

Mr. Bruce: That occurs through the negligence of the terminal employees?

Mr. Baxter: Yes, sir. Mr. Bruce: I pass on that.

Mr. Baxter: Have you a statement showing what that

amounts to in the last twelve months?

Mr. Bruce: No; I have no statement showing that. The records would show the amounts paid out on those different accounts?

Mr. Baxter: Are the amounts paid out on those accounts the actual amounts that you have expended in making these repairs or are they estimated amounts?

Mr. Bruce: The amounts are—it is the actual charge

for labor and material in making repairs.

Mr. Baxter: Now, when freight is destroyed or wrecked on the terminal tracks, who pays for that?

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Mr. Bruce: How is that, Mr. Baxter? Mr. Baxter: When you have a wreck and the property is damaged, not belonging to the Railroad Company, have you figured that in against the cost of the movement here?

Mr. Bruce: Well, that depends on who is responsible and whether it is the Louisville & Nashville Railroad or Nashville, Chattanooga & St. Louis Railroad or Nashville Terminals?

Mr. Baxter: How can the Nashville Terminals be responsible for any breakage at all when it operates no engines or trains?

Mr. Bruce: If we run one of our engines into a box

Mr. Baxter: One of "our" engines. What do you mean by our engines?

Mr. Bruce: Nashville Terminals—that is me.

The Nashville Terminal Company Mr. Baxter:

then, do operate engines?

There is no Nashville Terminal Com-Mr. Bruce: pany, Mr. Baxter; that is, not connected with our road. Mr. Baxter: Well, whatever you style yourself.

Mr. Bruce: The Nashville Terminals.

Mr. Baxter: Now, the Nashville Terminals' engines you said awhile ago that the Nashville, Chattanooga & St. Louis and the Louisville & Nashville allotted so many engines to do this business. Do they allot them to the Terminal Company?

493 Mr. Baxter: And while they are so allotted, then, they are your engines under your charge and

any damage they do is charged against the terminal property proper, as I understand it.

Mr. Jouett: I think the-

Mr. Baxter: Let him answer, Mr. Jouett, you are not on the stand.

Mr. Jouett: But I want to straighten you out.

Mr. Baxter: I want to get an answer to my question,

then you can straighten.

Mr. Bruce: In an accident causing damage we endeavor to fix the responsibility between the employees concerned. If we found that the employees of the Louisville & Nashville are responsible-

Mr. Baxter: Please answer my question.

Mr. Bruce: They pay the damage. If we find the terminal employees are responsible the Nashville Terminals settles the damage through the joint accounts.

Mr. Baxter: Between the roads?

Mr. Bruce: The two roads finally pay the bill, but we do not pay any bills as against the joint account unless it is clearly shown that the joint employees are responsible.

Mr. Baxter: Then, as I understand your system of bookkeeping you keep a set of books, you, the

Terminal Company, with the Nashville, Chattanooga & St. Louis Railway, you keep a set of books, or the same books, but separate accounts with the Louisville & Nashville Railroad Company-am I correct?

Mr. Bruce: No, sir; we keep one set of books. distribute the charges between the two roads as explained in one of the exhibits, in connection with one of the exhibits.

Mr. Baxter: You keep one set of books, but you keep two sets of accounts, as I understand it, as you gave an illustration awhile ago, if any breakage is done and the Nashville, Chattanooga & St. Louis crew did it, why the Nashville, Chattanooga & St. Louis is charged with that breakage, although it is done in your terminals.

Mr. Bruce: Well, we take it into account-we take the charge for damage down into account in the Nashville Terminals' account in the same way we would if we pur-

chased material for use.

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Mr. Baxter: For instance, you keep your books there, but you keep an account against Gray & Dudley?

Mr. Bruce: No; we charge up the material we buy from Gray & Dudley in the general account and then we distribute it between the two roads.

Mr. Baxter: Yes.

495 Mr. Bruce: And we would handle a case of damage to property in our charge in the same way.

Mr. Baxter: If your Terminal Company did the breakage, your engine and your crews and your crews did the breakage—

Mr. Bruce: Well-

Mr. Baxter: Wait a minute, Mr. Bruce; let us get together. I think we will save time. It did the breakage, the property was delivered to you by the Nashville, Chattanooga & St. Louis Railway, you would charge your company with that breakage so far as related to the Nashville, Chattanooga & St. Louis Railway, would you not?

Mr. Bruce: I can make that clear to you, Mr. Baxter,

probably, in my own way.

Mr. Baxter: Just answer that, sir, and then make the explanation.

Mr. Bruce: I do not understand the transaction as

you state it. If you will put it again.

Mr. Baxter: A car of glass ware is delivered by the Nashville, Chattanooga & St. Louis Railway to your Terminal Company to be delivered to the Tennessee Central Railroad at Baxter Heights. While on your tracks, by reason of the negligence of your employees, that car of glass ware is destroyed. Now, distribute the damage.

Mr. Bruce: Well, that claim would be paid by the Nashville, Chattanooga & St. Louis Railway and they would charge the amount paid out against the Nashville Terminals; we would accept the charge and distribute it as between the two roads. Wherever the terminals are responsible for damage to freight handled for one road or the other the other road also participates in the expense; naturally so under the general operation; it is just a case of bookkeeping.

Mr. Baxter: I thought that. You speak of different crews handling these cars in the switching movement. What do you mean by that? Explain that; give us a

transaction.

Mr. Bruce: We will say we have engine 649, foreman Cantor; he works between Kayne Avenue and Shops Junction. We have a foreman, say, John Brown, engine 549; he works between Kayne Avenue and East Nashvile, or works in East Nashville and plies back and forth occasionally. Then, each one of those men would make a record of the cars they handled between those points. That we call a movement.

Mr. Baxter: Well, the expense is the same under each

crew, is it not?

Mr. Bruce: Well, they get the same rates of pay; yes, sir.

497 Mr. Baxter: And the movement is continuous although it is changed like you change engines at

the end of a run and crews.

Mr. Bruce: Well, the movement of a car from point to point by the changing of the crew is practically the same as moving from one terminal to another by changing the crews at divisions, except at each one of these assembling yards the cars have to be switched probably by another crew than the one that moved them to that point.

Mr. Baxter: In a car that is destined from, say,

Kayne Avenue to West Nashville?

Mr. Bruce: No; that would go direct.

Mr. Baxter: I mean these through switching movements that are just like a run between terminals?

Mr. Bruce: Yes.

Mr. Baxter: Now, Mr. Bruce, you can file that ex-

hibit as you see proper or not. That is all.

Mr. Stokes: Mr. Bruce, you stated that the Terminal Company operated by the Tennessee Central had trackage room for 617 cars only. Do you know that to be a fact?

Mr. Bruce: No, sir; that information was gotten up by one of the engineers, and I think a clerk.

498 Mr. Stokes: I am not asking you where it came from; I am asking your knowledge. You do not know anything about that?

Mr. Bruce: I do not know of my own knowledge; no,

sir.

Mr. Stokes: You do not know for a fact they had room for 2101 cars on track?

Mr. Bruce: Well, I say that-Mr. Stokes: I say you-Mr. Jouett: Let him answer.

Mr. Bruce: No; I don't know that, but this information referred only to industrial tracks, as I understand it,

that you have other tracks.

Mr. Stokes: You stated that the Tennessee Central only had 86 industries located on their line? Do you know that to be a fact?

Mr. Bruce: Well, I base that statement gotten up by

some of our people.

Mr. Stokes: I say, do you know it to be a fact?
Mr. Bruce: I believe the statement is corerct, but I do not know from my own investigation?

Mr. Stokes: Exactly. You also stated that there were 31 industries service by the Louisville & Nash-499 ville, Nashville, Chattanooga & St. Louis and Tennessee Central jointly. Did you know that to be a

fact?

Mr. Bruce: That information was gotten up by my engineer, and I am thoroughly satisfied it is correct.

Mr. Stokes: You do not know as a matter of fact the Tennessee Central has on its own tracks served alone 111 industries and 58 that are served by all three roads, the Louisville & Nashville, Tennessee Central and Nashville, Chattanooga & St. Louis?

Mr. Bruce: No, sir.

Mr. Stokes: You did not know that was a fact. Mr. Bruce: I did not know that was a fact; no, sir.

Mr. Stokes: That is all.

RE-DIRECT EXAMINATION.

Mr. Jouett: You do not know any of these facts, do you, Mr. Bruce?

Mr. Bruce: No, sir; not from my personal investiga-

tions.

Mr. Jouett: You were asked about your authority in regard to making contracts as to building tracks and so forth. You have practically the same authority as other superintendents, have you not?

Mr. Bruce: I have fully as much and in some respects

probably more.

500 Mr. Jouett: None of them have that authority, have they, that you know of?

Mr. Bruce: No, sir.

Mr. Jouett: You were asked about it costing more per car to handle a large number of cars on a certain movement than a smaller number. Is that because when you reached the limit of economical handling, that any additional cars, because of the interference, adds to the cost?

Mr. Bruce: That is the natural result of a conges-

tion; yes, sir,

Mr. Jouett: You asked about the conditions of congestion in Memphis, New Orleans, Chattanooga and so forth. You do not know that personally, do you?

Mr. Bruce: No, sir; I have had all I could do at home. Mr. Jouett: Each terminal in the matter of congestion naturally depends on its own local physical conditions, does it not?

Mr. Bruce: Yes, sir; it is usually due to peculiar local conditions.

Mr. Jouett: Mr. Baxter asked you a number of questions about the terminal company. Is it not a fact that the terminal company. Is it not a fact that the

Terminal Company, that is the Louisville & Nashville Terminal Company, the corporation that was

formed to take over this property, execute the mortgage and then lease all of the property to the two transportation lines—is it not a fact that that never operated a day, and that is a fact.

Mr. Bruce: Yes, sir; it does not own any cars or en-

gine and does not operate any cars or engines.

Mr. Jouett: Did it ever own any cars?

Mr. Bruce: No, sir.

Mr. Jouett: Operate a railroad or render a terminal service of any sort at any time?

Mr. Bruce: No, sir.

Mr. Jouett: What you mean by the Nashville Terminals is simply a short expression to indicate the joint arrangement entered into between the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad under the contract of 1900 which has been filed, is it not?

Mr. Bruce: Yes, sir.

Mr. Jouett: That is the agreement where the two companies undertook through you as their agent to do certain things here in Nashville?

Mr. Bruce: That is it. It is simply an organization

and not a company.

502 Mr. Jouett: And is not that term also used to indicate the limits within which this particular service is rendered?

Mr. Bruce: Well, the limits of the terminals are pre-

scribed or indicated in the contract of 1900.

Mr. Jouett: The contract that has been filed defines all of the physical conditions as well as the joint operating arrangement, does it not?

Mr. Bruce: Yes, sir.

And that is what you carry out as the Mr. Jouett: joint superintendent?

Mr. Bruce: That is what I go by; yes, sir.

Mr. Jouett: You were asked about the movement to the shoe factory. In that movement you have to pass over these terminals at and around the Union Station,

Mr. Bruce: Yes, sir.

Mr. Jouett: Those are held under a lease by these two companies that have formed this joint operating arrangement, and they have the right to use them just as much as they do their own tracks elsewhere within the switching limits, have they not?

Mr. Bruce: Yes, sir.

503 Mr. Baxter: You mean the physical right? Are you asking the witness a legal construction of the

laws! If you are I object to it.

Mr. Jouett: I am trying to show there is no dis-504 tinction in the operation or treatment of these tracks from the treatment of the other tracks within the Nashville switching limits.

Mr. Bruce: No, sir; we operate them just the same as we would over the Louisville & Nashville or the Nash-

ville, Chattanooga & St. Louis operate over them.

Mr. Jouett: Is it or not a fact that the building of these new facilities at Radnor will increase to some extent the service involved in doing switching to industries in the city of Nashville?

Mr. Bruce: Yes; it will increase the cost and increase

the time necessary to do the work.

Mr. Jouett: Explain just in a moment how that is. Mr. Bruce: We will have to handle all of the cars for the city between the present facilities, our Kayne Avenue yards and Radnor. Every city car arriving at Radnor will pass through this yard just the same as it does now. We will have to bring it in from Radnor to the present vards and distribute it to the outlying district, wherever it belongs; then when it goes out we will have to bring it

back to the Kayne Avenue train vards and get it shaped up with cars going out from Radnor to go

everywhere.

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Mr. Jouett: Well, from your knowledge of the local conditions and of the transportation conditions that will prevail when the Radnor yard is put in, state to the Commissioner whether or not that will materially affect or lessen the cost of handling the switching business and also the congestion connected with the handling of the switching business.

Mr. Bruce: Well, it will very materially increase the

cost of handling the city business.

Mr. Jouett: By city business you mean the switching business?

Mr. Bruce: By city business I mean the switching business, but it will not materially decrease the conges-

tion in these vards.

Mr. Jouett: Mr. Henderson asked you about a movement from the Tennessee connections to the State prison. Does it or not require more time and expense to stop at the Tennessee Central connection and pick up a car for the State prison than to run a car from Kayne Avenue terminal yard to State prison in the West Nashville run?

Mr. Bruce: Well, we would have to make an extra stop at Shops Junction to pick that car up and take it

out to West Nashville, as we do not have enough business between Shops Junction and West Nashville to operate an engine between those points or to make movements direct between those points.

Mr. Jouett: Mr. Baxter asked you to furnish information giving the actual cost of a particular switching movement. I will ask you as a practical terminal man, whether it is possible to furnish that. Do you consider what has to go into the estimate of the general cost?

Mr. Bruce: I do not consider it practicable to get it

at all.

Mr. Jouett: Is there any change made in the switching charge to different parts or is that the general average charge?

Mr. Bruce: That is the general average charge,

whether we handle it twelve miles or two miles.

Mr. Jouett: And \$4.13, as I understand you, is the actual cost price of actually operating the terminal ser-

Mr. Bruce: Yes, sir.

Mr. Jouett: And that does not include the overhead charges ?

Mr. Bruce: That does not include any overhead charges.

507 Mr. Jouett: That is all, Mr. Commissioner.

CROSS-EXAMINATION.

Mr. Baxter: Mr. Bruce, do you know why the Nashville Terminal Company-the Louisville & Nashville Terminal Company is its corporate name, I believe-was incorporated?

Mr. Bruce: I understand it was incorporated for the purpose of acquiring property and constructing facilities to be leased to the two roads for their joint operation.

Mr. Baxter: I understand you to say a while ago that it had nothing but paper to lease.

Mr. Bruce: How is that?

Mr. Baxter: I understood you to say a while ago it had nothing but paper to lease.

Mr. Bruce: Paper? Mr. Baxter: Yes.

Mr. Jouett: He did not say that.

Mr. Bruce: I did not make any such statement, Mr. Baxter.

Mr. Baxter: I beg your pardon. In being cross-examined by Mr. Stokes you answered him that to your knowledge you did not know any of the questions that he asked about, information relative to location of industries along his line. I see a lot of exhibits here. Did you personally prepare those exhibits?

Mr. Bruce: Personally compile them? 508

Mr. Baxter: Yes, sir.

Mr. Bruce: No, sir.

Mr. Baxter: Did you personally compile the information contained on those exhibits?

Mr. Bruce: No, sir.

Mr. Baxter: Did you superintend the parties who did compile them?

Mr. Bruce: Yes; I had it done; told them what to

get up.

Mr. Baxter: Did you superintend, go around——

Mr. Bruce (interrupting): I did not sit over them while they were doing it; I went over it after it was completed.

Mr. Baxter: Then all of this is hearsay so far as you

are concerned?

Mr. Bruce: No: I think that is correct. Mr. Baxter: You believe it is correct? Mr. Bruce: I believe it is correct, yes.

Mr. Baxter: This was told you, was it not?
Mr. Bruce: Yes, sir; but I believe it is correct. I can't do all those things.

509 Mr. Jouett: You are the executive officer in charge of the work embodied in these statements, are you not?

Mr. Bruce: Yes, sir.

Mr. Jouett: Did you not give the directions to your subordinates what to get up in each department?

Mr. Bruce: I did.

Mr. Jouett: Did you not supervise it to the extent of going over it with them afterwards and checking as best you could from your knowledge and recollection of the facts?

Mr. Bruce: I went over it in a general way: I did not attempt to check their figures with what they got.

Mr. Jouett: I did not mean their figures.

Mr. Bruce: No, sir.

Mr. Jouett: Are you not satisfied from your general information that the information in each of these exhibits is correct?

Mr. Bruce: I am satisfied it is; yes, sir.

Mr. Jouett: Do you think it could be materially wrong without your knowledge?

Mr. Bruce: No, sir; it could not.

Mr. Jouett: Without your knowing it?

510 Mr. Bruce: No, sir. Mr. Jouett: That is all.

(Witness excused.)

Mr. Jouett: Now, Mr. Phelps, just a question or two.

C. B. Phelps was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Jouett: Mr. Phelps, what is your name?

Mr. Phelps: C. B. Phelps.

Mr. Jouett: Where do you live? Mr. Phelps: Louisville, Kentucky.

Mr. Jouett: What is your business in Louisville? Mr. Phelps: Superintendent of transportation of the Louisville & Nashville Railroad Company.

Mr. Jouett: How long have you been superintendent of transportation on that road, the Louisville & Nashville? Mr. Phelps: Since July 1st, 1900.

Mr. Jouett: And prior to that were you in the service

of the company?

Mr. Phelps: Prior to that I was located at Nashville, Tennessee, from 1892 to 1900, in the capacity of assistant superintendent. 511

Mr. Jouett: Assistant superintendent of the Louisville & Nashville Railroad?

Mr. Phelps: Yes, sir.

Mr. Jouett: Then you lived in Nashville eight years

before going to Louisville?

Mr. Phelps: I have spent a good deal of my lifetime in Nashville. I first located here in 1878, again in 1891, and then again in 1892.

Mr. Jouett: Will you please state briefly to the Commission what are your duties as superintendent of transportation of the Louisville & Nashville Railroad?

Mr. Phelps: I have charge of the equipment and the accounting therefor, distribution of cars, etc., the handling of the power while on the road, the making of time tables and such matters as that.

Mr. Jouett: Does your business as superintendent of transportation call for a knowledge of the cost of operation both on the main line and in the terminals?

Mr. Phelps: It does.

Mr. Jouett: Have you heard the testimony of Mr. Bruce as to the cost of operation in the Nashville Terminals?

512 Mr. Phelps: I have.

Mr. Jouett: Have you or not undertaken to familiarize yourself with the movements in Nashville and the nature and extent of operation service involved in switching to and from the industries in this city?

Mr. Phelps: I have. Up to the time of the opening of the terminals I was in close touch with it; in fact, I have charge of it, and naturally have been in position to keep in touch with it ever since, more or less, and I have heard Mr. Bruce's testimony, and I agree with him that his figures of \$4.13 per car average for the handling of these cars in switching is—well, really, I look upon it, as he does, that we cannot understand how they do it for that money. And I would like to say something for the Commissioner's information about this organization here.

Mr. Jouett: All right, sir.

Mr. Phelps: The management look upon the organization at Nashville as being perfect. At the time the terminals were turned over, that was 15 years ago, they realized that on account even then of the contracted space,

say between Cedar streets on the North and South
513 Cherry on the South, that we would have to have
the best organization, everything would have to be
systematized, so that by careful and constant handling
day and night—that would be necessary in order to keep
up with the business. Now that has proved so ever since.

At that time our present general manager was put in charge of these terminals and is responsible for the organization. In turn he appointed the present superintendent, Mr. Bruce, as his assistant. Mr. Bruce succeded him.

Now, I know in my position what conditions are at other points where there are congestions. I might mention Indianapolis, Buffalo, Detroit, Toledo, etc., points that I have in mind, where they are almost continually congested, and they have that reputation all over the country. I know that passenger trains are held out. I have been held out on them myself for an hour or an hour and a half getting into the yard. Now, Mr. Bruce has testified that it is a common thing for him to hold freight trains out. He was not asked about passenger trains, but we know that he always manages to get these passenger trains in here by running them around against the current of traffic under his Block system. It is a

very common thing to hold freight trains out, and 514 it is a very expensive operation. They must be held out at points on the line of road, nearby points, until they can be taken in, whenever this congestion, or these congestions, come upon us.

Now, we have sent out people from other points, Cincinnati, Birmingham, Evansville, New Orleans, Louis-

ville, to Nashville to look over the situation here and take note and see how things are being done in order to overcome similar difficulties that are occurring at those points. On the other hand, we called upon Mr. Bruce to send his experts to these points to show them how to do these things.

I thought it was proper to mention that.

Mr. Jouett: Well, but for such excellent management as that what would be the condition of these terminals as to the congestion, speaking from your knowledge of the volume of traffic and the physical conditions here!

Mr. Phelps: Well, I am sure Nashville does not want to get the reputation they have at these other points that I have mentioned, and I know they will if they undertake to take the additional business that is going to require two or three times the time of handling it, two or three times

the energy; it will only, as Mr. Bruce has said,

aggravate the situation still further. 515

Mr. Jouett: Are you sufficiently familiar with the situation here and the general conditions here relative to switching for another road in comparison with handling the same business in over your own road to say whether or not Mr. Bruce's estimate of nearly three times as many movements is correct? I mean, it requiring nearly three times as many movements to do switching for another road as it does in the case of switching for his own road?

Mr. Phelps: Yes, sir; I followed him closely on that. I agree with him, especially with what he said about the empty car.

Mr. Jouett: That is all, Mr. Phelps.

CROSS-EXAMINATION.

Mr. Henderson: Mr. Phelps, I understood you to say you were generally familiar with the cost of operation on the main line and at terminals as well, did you not?

Mr. Phelps: Generally familiar with the cost of op-

eration.

Mr. Henderson: The cost on the main line and at the terminals of the Louisville & Nashville Railroad?

Mr. Phelps: Yes.

Mr. Henderson: Does that knowledge extend to 516 terminals other than Nashville, or is it confined to Nashville!

Mr. Pheips: Well, I have been located at Louisvine

fourteen years.

Mr. Henderson: You have stated that Nashville was considered the ideal point and operated more efficiently,

I believe, than any other, and that you sent your representatives from other points here to get pointers?

Mr. Phelps: Yes, sir.

Mr. Henderson: Then I would judge from that that it costs less to switch cars here than it does at Louisville, New Orleans, Birmingham or these other points from where you sent representatives up here to get their pointers, is that true?

Mr. Phelps: No; that is not true.

Mr. Henderson: Why do you send them up here; to find out how to make it more expensive or less expensive?

Mr. Phelps: To overcome difficulties where there was congestion. I did not say that Nashville is the only place we have these congestions. We have them at other points, you might say occasionally, but here it is a very common thing, very common.

Mr. Henderson: Does it cost more for terminal services at Nashville than it does at Cincinnati, Louisville, New Orleans and such points as that

served by the Louisville & Nashville Railroad?

Mr. Phelps: I have not gone into the cost at these other points. In fact, I have nothing to do with the switching rate; I have always wondered, though, how they

could switch cars for \$3.00 a car.

Mr. Henderson: Now you also testified that it costs more for switching cars here that were delivered by the Tennessee Central than it did for cars reaching here by your own line, Louisville & Nashville, and Nashville, Chattanooga & St. Louis?

Mr. Phelps: Yes.

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Mr. Henderson: Is that condition peculiar to Nash-

ville, or is it the same condition everywhere else?

Mr. Phelps: Well, no it is not peculiar to Nashville; we have the same condition at Louisville. Wherever our terminals were thrown open we would have these long distances to travel as against direct movement.

Mr. Henderson: Is it not true at Atlanta?

Mr. Phelps: I presume it is true to a slight extent at a good many points.

Mr. Henderson: It is generally true at every

point, is it not?

Mr. Phelps: Where it would take longer to reach one point of interchange than another? I think that follows; yes, sir, wherever they have those conditions.

Mr. Henderson: That is all.

Mr. Baxter: Mr. Phelps, does it cost you from a transcar of coal than it does a car of live stock? portation standpoint any more, we will say, to switch a

Mr. Phelps: I should say it would cost more to handle the live stock. Live stock is something that will not stand the delay coal will. If we were badly congested, next to passengers we would endeavor to get that car of stock out.

Mr. Baxter: Get that car out first?

Mr. Phelps: Yes, sir.

Mr. Baxter: Now, Mr. Phelps, does it cost you any more to switch a car of competitive freight of any character than it does a car of non-competitive freight?

Mr. Phelps: Well, under these conditions it would cost more, because there is a chance of losing some of your

revenue, road-haul revenue.

519 Mr. Baxter: I mean the actual cost of the movement, that's what you prospectively are going to lose or, again, you might gain. You are speculating now. I mean the actual cost of the movement.

Mr. Phelps: Making the same movement from one

point of interchange to another point?

Mr. Baxter: Yes, sir; a car of competitive freight and a car of non-competitive freight.

Mr. Phelps: I cannot see why the service should be

different.

Mr. Baxter: And the cost, therefore, would not be different. Now, Mr. Phelps, you have testified as to the excellency of the terminal facilities here, which is true.

Mr. Phelps: Yes; I want to reiterate that.

Mr. Baxter: I do not suppose there is a yard anywhere, unless it be in some large city, that is comparable to the economical operation of this yard here. How does the cost of operation in your opinion, Mr. Phelps, compare with the cost of operation in the terminals in St. Louis? In your opinion, roughly speaking, would it be more or less in Nashville than in St. Louis?

Mr. Phelps: More in Nashville. 520 Mr. Baxter: More in Nashville?

Mr. Phelps: Yes, sir.

Mr. Baxter: How do you arrive at the difference? Mr. Phelps: On account of the general conditions.

They have got some of the best facilities in St. Louis they have in the country.

Mr. Baxter: Do they not have as many blockades in St. Louis as they do here?

Mr. Phelps: No, sir.

Mr. Baxter: When they do have one do not those blockades last a good deal longer?

Mr. Phelps: No; they have very little trouble of that

character.

Mr. Baxter: Well, then you say there is a difference,

and what in your opinion, Mr. Phelps, would be the difference in the cost of switching in Nashville and in St. Louis?

Mr. Phelps: I do not believe I can make any comparison. I-

Mr. Baxter (interrupting): Well, you said-Mr. Jouett (interrupting): Let him finish.

Mr. Phelps: I am not sufficiently familiar with the handling of the business at St. Louis to make that comparison.

521 Mr. Baxter: Well, you have general knowledge of the costs throughout the United States. You study those subjects; they are on your fingers' ends. Now give me an idea in dollars and cents. Would you say a dollar more in Nashville than in St. Louis?

Mr. Phelps: I am not prepared to answer that question; I would have to study the conditions at St. Louis

in order to make the comparison.

Mr. Baxter: Now I will ask the same question as to Chicago. Would it cost more or less to switch in Chicago around the city than it would in Nashville?

Mr. Phelps: I happen to know something about how long it takes to get business through Chicago, but I do not

know what it costs.

Mr. Baxter: That is caused by the blockade, is it not, the congestion, more or less?

Mr. Phelps: Well, there always seems to be a conges-

tion there.

Mr. Baxter: Well, that would be a continuous congestion as compared to spasmodic conditions here, and the cost would be more, would it not, in Chicago than in Nash-

ville in your opinion, considering the elements you 522have taken into consideration here in arriving at

the cost of the movement?

Mr. Phelps: I am not able to explain that.

Mr. Baxter: It certainly would not be less, would it?

Mr. Phelps: Less?

Mr. Baxter: Less in Chicago than here, on account of the number of moves necessary to handle a car and get it around the city?

Mr. Phelps: I do not say the congestion in Chicago is due to want of facilities, because we know something

about their methods.

Mr. Baxter: I do not think it is due to want of facilities here.

Mr. Phelps: I think if we would handle in Nashville as they handle it in Chicago there would be more agitation here at Nashville than there is now.

Mr. Baxter: Then it must necessarily cost more money at Chicago than here.

Mr. Phelps: It is just in the methods of handling.

Mr. Baxter: Yes; especially in the methods of handling. Now, in arriving at your idea of cost here, have you ever taken the trouble to get on an engine and take your watch and take the time of the men actually employed in a movement?

Mr. Phelps: I have done that with a view to getting

the actual time that an engine is idle.

Mr. Baxter: Have you ever gotten on an engine and before getting on there weighed your waste, measured your oil, weighed your water, measured your coal and operated that engine until those quantities were exhausted and counted the number of cars that you have moved?

Mr. Phelps: No; I would not consider it necessary. Mr. Baxter: You would not consider it necessary?

Mr. Phelps: No, sir.

Mr. Baxter: That would get you the actual cost though, would it not?

Mr. Phelps: We know the consumption of coal and

waste.

Mr. Baxter: Answer my question and then explain, Mr. Phelps. That would give you the actual cost of the movement, would it not?

Mr. Phelps: Yes, sir; I suppose others have gone into it. We have our performance sheets that are gone into very carefully in order to show those items of cost.

Mr. Baxter: Well, a performance sheet showing those facts could demonstrate mathematically the cost of the movement of each particular car, would it not?

Mr. Phelps: No.

Mr. Baxter: Stand aside, if it won't.

524 RE-DIRECT EXAMINATION.

Mr. Jouett: Mr. Phelps, just one question. I understand that the local rates of the Nashville, Chattanooga & St. Louis run from say \$5.00 to \$36.00 a car for distances less than ten miles. I also understand that this average switching movement is at least ten miles. Now will you state how the cost of performing a ten mile service in the yards with the different movements compares with the cost of carrying ten miles on the transportation haul?

Mr. Phelps: Well, we can readily see where it would

be very much more expensive.

Mr. Jouett: It would be more expensive?

Mr. Phelps: I was going to say that the movement

through a terminal would be very much more expensive than it would out on a road-haul or on a local rate.

Mr. Jouett: I will ask you to state from your experience in these matters whether the average switching charge that has been put in arbitrarily in the various cities in the South, and generally elsewhere, begins to represent the real cost?

Mr. Phelps: It does not.

Mr. Jouett: And the value of the service?

Mr. Phelps: It does not. Mr. Jouett: That is all.

RE-CROSS EXAMINATION.

Mr. Henderson: Mr. Phelps, does not that ten mile local scale of the Nashville, Chattanooga & St. Louis Railway, or the ten mile road-haul, include the terminal movement as well as the road-haul?

Mr. Phelps: Well, I don't know about that.

Mr. Henderson: It applies from the local depot or any team tracks out through your yards and ten miles on the line, does it not?

Mr. Phelps: That is something I am not conversant with; I only heard of it here.

Mr. Henderson: That is all.

(Witness excused.)

Mr. Jouett: Mr. Bradshaw, just one question.

526 C. W. Bradshaw was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Jouett: Mr. Bradshaw, where do you live?

Mr. Bradshaw: Louisville, Kentucky.

Mr. Jouett: What business are you engaged in there? Mr. Bradshaw: I am superintendent of the Louisville & Nashville, Cincinnati & Lexington division of the Louisville & Nashville Railroad.

Mr. Jouett: That is the line running from Louisville to Cincinnati and from Louisville to Lexington, is it?

Mr. Bradshaw: Yes, sir. Mr. Jouett: Those two lines? Mr. Bradshaw: Yes, sir.

Mr. Jouett: How long have you held that position as superintendent?

Mr. Bradshaw: Five years.

Mr. Jouett: And before that what was your business? Mr. Bradshaw: I was superintendent for seven years prior to that; six in the Atlanta division, part of the time on the Owensboro & Nashville division, and for ten years prior to that in charge of the roadway department of several divisions of the Louisville & Nashville

Railroad, and prior to that six years in the chief engineer's office; altogether a total service of about 33 years in the Louisville & Nashville Railroad.

Mr. Jouett: Does your position as superintendent bring you into direct connection with the operation of trains and the operation of a railroad?

Mr. Bradshaw: It does.

Mr. Jouett: Have you had any acquaintance with the conditions at Nashville?

Mr. Bradshaw: Yes, sir.

Mr. Jouett: When and under what circumstances?

Mr. Bradshaw: From the middle of 1890 to the first part of 1895 I was in charge of the maintenance of way department on the division North of Nashville, and from the latter part of 1897 to the first part of 1902 I was in charge of the maintenance of way department of the division South of Nashville and, therefore, I am thoroughly acquainted with the Nashville Terminals.

Mr. Jouett: And have you within the last few days acquainted yourself fully with their conditions as they now exist?

Mr. Bradshaw: Yes, sir; I made a trip over 528

them with Mr. Bruce in a special train.

Mr. Jouett: Have you heard Mr. Bruce's testimony here as to the physical conditions at Nashville and the cost of operating these terminals?

Mr. Bradshaw: Yes, sir.

Mr. Jouett: I will ask you to state to the Commission your opinion as to the correctness of his estimate that the actual cost of the service in switching to the industries in Nashville will average at least \$4.13, not counting overheard charges—\$4.13 a car?

Mr. Bradshaw: Well, I desire to make some prelim-

inary remarks with respect to that.

Mr. Jouett: All right, sir.

Mr. Bradshaw: For three days, on account of having known Mr. Bruce for more than twenty years, and we having many things in common, we went into many of the details of the information he was securing, and I saw those statements. He invited criticisms and I criticised. I have endeavored to pay a good deal of attention to cost units and units of operation so far as I could on my own

division, and I took issue with him. It is my opin-529 ion that his cost of \$4.13 per car for switching freight delivered by the car-carload freight delivered by the Tennessee Central Railroad Company, is too low.

Mr. Jouett: And you understand that that does not include overhead charges?

Mr. Bradshaw: Does not include overhead charges. Mr. Jouett: Do you know what the general impres-

sion among railroad men is as to whether or not the ordinary switching charges prevailing in this section equal the cost of the service?

Mr. Bradshaw: Among those people who have given the matter any study they are all convinced that it is far below cost.

Mr. Jouett: That is all, sir.

CROSS-EXAMINATION.

Mr. Baxter: Just give the names of those that you have convinced it is away below cost, Mr. Bradshaw.

Mr. Bradshaw: Well, I think the-

Mr. Baxter (interrupting): I would like to have the names, not your general speaking.

Mr. Bradshaw: Those with whom I am closely associated, for example.

Mr. Baxter: Well, give the names.

530 Mr. Bradshaw: Mr. Bruce, superintendent of the Nashville Terminals, Mr. Phelps, superintendent of transportation of the road.

Mr. Baxter: Yes, sir.

Mr. Bradshaw: Mr. B. M. Sparks, general manager of the road.

Mr. Baxter: Has he testified in this case?

Mr. Bradshaw: He has not.

Mr. Baxter: Who else?

Mr. Bradshaw: Mr. G. E. Evans, fourth vice-president of the road.

Mr. Jouett: Explain who he is.

Mr. Bradshaw: Fourth vice-president.
Mr. Jouett: Explain what his duties are.

Mr. Bradshaw: In charge of operating matters. Mr. J. B. Arbegust, superintendent of the Louisville Terminals; Mr. T. E. Brooks, superintendent of the Birmingham division; Mr. R. C. Morrison, superintendent of the Knoxville division of the Louisville & Nashville Railroad. With all these gentlemen off and on I have discussed the feature of cost per unit of service, and especially as affects the cost per car of switching.

531 Mr. Baxter: Now you have spoken of the cost per unit of service.

Mr. Bradshaw: Yes, sir.

Mr. Baxter: I want to know what that is, Mr. Bradshaw: A unit is a car; one car.

Mr. Baxter: We have one car. Now the service on

that one car is what?

Mr. Bradshaw: It is small costs entering into the movement of that car; the average cost of handling that car with all other cars; that includes the cost of maintenance of every character.

Mr. Baxter: Maintenance of every character?

Mr. Bradshaw: Yes, sir; in the terminal within which it is switched; it includes the cost of transportation of every character, all the details of those costs, and in our details of cost there are 160 primary accounts and 21 more added on account of depreciation of maintenance of way and structures, and one I believe on account of maintenance of power, depreciation of power.

Mr. Baxter: Do you apply to that the accounts as prescribed by the Interstate Commerce Commission in

arriving at your opinion?

539 Mr. Bradshaw: Exactly so. We detail beyond

their requirements.

Mr. Baxter: Now have any of these gentlemen shown you their reports to the Interstate Commerce Commis-

sion as to the cost at Nashville?

Mr. Bradshaw: I have a copy of the annual report that Mr. Bruce has and those details of account are made up strictly in accordance with the regulations of the Interstate Commerce Commission. I am thoroughly familiar with those accounts. I have gone into all the details of this statement that Mr. Bruce has submitted.

Mr. Baxter: Has that report been filed with the Com-

mission?

Mr. Bradshaw: It has not, so far as I know.

Mr. Baxter: Will you file that report in this case? Mr. Bradshaw: I will file it as a part of my evidence with the statement that I believe it is reasonably correct, or equally as correct as any report we submit to the Interstate Commerce Commission, and we endeavor to make every report to that Commission correct.

Mr. Baxter: Now, Mr. Bradshaw, all the gentlemen whom you have mentioned are in the employ of 533

the Louisville & Nashville Railroad? Mr. Bradshaw: Yes, sir.

Mr. Baxter: You have not mentioned any expert in this line other than those gentlemen?

Mr. Bradshaw: Yes, sir.

Mr. Baxter: I am not discrediting the fact they belong to the Louisville & Nashville Railroad. All of those gentlemen, or the majority of them, I believe testified in the Louisville Terminal case, did they not?

Mr. Bradshaw: I am not sure of that; I did not.

Mr. Baxter: You did not? Mr. Bradshaw: I did not.

Mr. Baxter: Have you gone into it minutely yourself, taking each item that went in to make the expense, weighing it, inspecting it, seeing it applied, and seeing it exhausted, that I went over with Mr. Phelps? You heard the question I put to him.

Mr. Bradshaw: You mean in the cost account items?

Mr. Baxter: Yes.

Mr. Bradshaw: Yes, sir; I have done that on a number of occasions in determining the cost units.

Mr. Baxter: Have you got any of those left?
Mr. Bradshaw: I have not with reference to switching service that I recall.

Mr. Baxter: You have not?

Mr. Bradshaw: With reference to switching service.

Mr. Baxter: That will do.

Mr. Henderson: Mr. Bradshaw, you mentioning the cost of terminal service here and at other points, do you or not know whether it is a fact that the through rates to and from all points are supposed to include the cost of terminal service as well as the road haul?

Mr. Bradshaw: It is my understanding that the rate includes our switching service at the point of destina-

tion.

Mr. Henderson: And the point of origin, does it not?

Mr. Bradshaw: And point of origin, yes, sir.

Mr. Henderson: That is all.

(Witness excused.)

Mr. Jouett: We wish to show by the secretary that the first stock was obtained in 1880. Do you know anything about that? Will you accept that statement?

Mr. Baxter: What stock?

Mr. Jouett: The first stock that was acquired by the Louisville & Nashville Railroad in the Nashville, Chattanooga & St. Louis Railway was in 1880, and it has acquired stock since that time to this time.

Mr. Henderson: That is satisfactory to me.

Mr. Baxter: I would like to add to that the different other blocks that the Louisville & Nashville Railroad has acquired in the stock of the Nashville, Chattanooga & St. Louis Railway and under what issues. The secretary can file that.

Mr. Jouett: The secretary can get up a statement of what the record shows on that subject and file it.

Commissioner Meyer: You are willing to file that?

Mr. Jouett: Yes, sir.

Commissioner Meyer: With that understanding you may proceed with the next witness. That is entirely satisfactory to you, Mr. Baxter?

Mr. Baxter: Yes. sir.

Commissioner Meyer: And Mr. Henderson? Mr. Henderson: Yes. sir.

536 Charles Barham was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Gwathmey: Mr. Barham, what is your connection with the Nashville, Chattanooga & St. Louis Railwav?

Mr. Barham: I am its general freight agent. Mr. Gwathmey: With your office at Nashville?

Mr. Barham: Yes, sir.

Mr. Gwathmey: How long have you held your present position and what, in brief, has been your experience

in connection with railway and traffic matters?

Mr. Barham: I have been in the railway employ about 26 or 27 years, and with the Nashville, Chattanooga & St. Louis Railway not quite 16 years; as general freight agent of the company since 1907.

Mr. Gwathmey: Have your duties then for a number of years been such as to bring you directly in touch with the matter of rates and the adjustment of rates along the lines of your company and in the territory served

Mr. Barham: They have.

Mr. Gwathmey: On page 17 of the petition in this case reference is made to a scale of class and com-537 modity rates formerly published in Rule 8 of a

tariff of your company as applying between Shops Junction and Nashville. Please describe the character of those rates and state the time when they were published and the circumstances under which they were published and subsequently maintained?

Mr. Barham: Mr. Commissioner, the Nashville & Northwestern Railway was the original company of what is now our Northwestern division; it ran from Nashville to Hickman, Kentucky. The first station on the Northwestern Railroad after leaving Nashville originally was Stock Yards, the next station was Shops, the next station

was Hardie, the next station was Belleville. In 1894, or probably prior to that time—but I have gone back as far as 1894—rates on classes and commodities were carried between Nashville and the points I have mentioned. That is to say, we would accept a box of soap or a carload of soap or any other commodity at Nashville to be transported to Stock Yards which, if you will examine the map, is between Nashville and the Shops. We would take a like shipment, carload or less, to Shops, and so to all the other stations on that division.

In 1900 Stock Yards was abolished as a station, making the first station then out from Nashville Shops.

538 That continued until 1913. In 1913 we abolished what we conceived to be a lot of superfluous stations, not only here at Nashville, but suburban stations at Memphis, at Chattanooga, at Atlanta, and in other

cities.

We abolished Shops as a station because it was in the city of Nashville and, therefore, a part of Nashville. We abolished Cravens and Lookout at Chattanooga for the same reason; we abolished Aulon and United States Fireworks and Montgomery Part at Memphis for that reason, and so at all the junction points. So long as those stations were in effect, however, there were rates

to and from Nashville and respective points.

When the Tennessee Central built across our line at Shops the management decided there would be no switching, reciprocal switching, between the two companies. We had then in effect rates from Shops to take care of the spasmodic shipments which might come along. Those rates were applied when called for. They were not put in for the purpose of taking care of Tennessee Central business. Their origin had nothing to do with the Tennessee Central Railroad; they were in effect from

that point long before the Tennessee Central 539 Railroad was conceived; but they were merely continued and so continued until we concluded to abolish those outlying stations, I mean to remove them from

our tariffs.

We were then confronted at Nashville with the fact that if we pulled them out altogether we would have nothing to take care of these spasmodic shipments, and so we transferred them from our local tariff, in which they had previously been carried, into our terminal tariff, making a distinct note in the tariff that the rules, regulations, etc., in that tariff did not apply on business between the Tennessee Central and our own line, but that these particular rates would govern on business delivered to us at Shops by the Tennessee Central Railroad.

Mr. Gwathmey: Now, Mr. Barham, were these rates applicable on both carload and less than carload traffic?

Mr. Barham: Yes, sir. As a matter of fact we carry less than carload rates today from Nashville to West Nashville.

Mr. Gwathmey: Were they a line of class rates applying between Shops Junction and Nashville and published in your standard tariff showing your line 540 rates for the line hauls between a number of stations?

Mr. Barham: They were the standard rates appli-

cable for that distance for main line hauls. Mr. Gwathmey: And if I understand you correctly, any traffic, whether carload or less than carload, offered for transportation to your company at Shops Junction for movement to Nashville would have been accepted at

those rates?

Mr. Barham: It would have been; I never knew a less than carload shipment to have been offered us but it would have been accepted. If a man had offered a less than carload shipment at Nashville going to Shops, and had prepaid the freight, it being a non-agency station, it would have been taken and delivered at new Shops just the same as it would be taken and delivered at Hicks Crossing or any other station.

Mr. Gwathmey: And these rates were published before the Tennessee Central was built into Nashville?

Mr. Barham: Many years before.

Mr. Gwathmey: And maintained in the same way

after that company was built into Nashville?

Mr. Barham: They were. I would like to add that those rates were canceled out in January of this 541 year. I gather though from testimony I have heard today that there must have been one or two carloads of freight handled in the meanwhile on the basis of the old rate, probably through some misunderstanding on the part of the agent; there is no authority for it.

Mr. Gwathmey: Was that done with your authority? Mr. Barham: It would be without authority. I was very much surprised and have been trying all day to find out how it was done but have not been able to get any

specific reply.

Mr. Gwathmey: It is contrary to any tariff, is it not? Mr. Barham: Contrary to any tariff, yes. Gwathmey, let me add just one other thing, that at the time, of course, that these rates were established between

Nashville and Shops, Shops was not in the city of Nashville. The city of Nashville extended its boundaries and took in Shops a long, long time after that.

Mr. Gwathmey: Have you ever known of similar in-

stances in other cities?

Mr. Barham: Why, it is the history of every large

city.

Mr. Gwathmey: Mr. Barham, I understand you to say that you have had an extensive experience in connection with the matter of handling railway traffic, rates, etc. From a traffic standpoint what

is the theory of reciprocal switching?

Mr. Barham: The theory of reciprocal switching is, broadly, that one line will handle for the other as much as may be handled by it in return, and that in a final casting up of accounts the movement will substantially balance, and as a matter of fact that is very nearly the case with us. During the last six months the number of cars we have switched for all other lines out of our junctions—

Mr. Jouett (interrupting): You do not mean just at

Nashville?

Mr. Barham: Not at Nashville, but at all junctions, will not vary more than 5 or 6 per cent from the number of cars which they have switched for us.

Mr. Gwathmey: So, that, speaking on the whole, you figure that there has been a fair balance of accounts?

Mr. Barham: Been a substantial balancing of accounts.

Mr. Gwathmey: From a traffic standpoint what in your opinion is the peculiar advantage to any carrier in the possession of extensive and sufficient terminal facilities?

Mr. Barham: Well, of course, the advantages are very many. They lie largely in the control of the traffic for road or transportation hauls, and for 543 usually your long transportation hauls. It enables the line to secure the location of industries, it enables it to control business as against other cities and other routes: it enables you to conserve your equipment in that you retain it under your own control; it enables you very frequently to initiate better divisions with other lines than you get in the absence of such terminals. In fact, as I have always said, the finest soliciting agent in the world is a side track. Give me a marked superiority in terminals and I will consider I have a marked superiority in the effectiveness of all soliciting agencies.

Mr. Gwathmey: Does it follow, therefore, that al-

lowing any line to use the terminal facilities of another carrier or carriers is the source of a substantial, material value, not only from the standpoint of a movement of traffic but from a commercial standpoint, you might say?

Mr. Barham: They are of value in every way to a

carrier, Mr. Gwathmey.

Mr. Gwathmey: I think Mr. Jouett wants to ask a

question.

Mr. Jouett: Mr. Barham, I wish to ask you one question in regard to the situation at Vine Hill. There 544 has been some testimony here that the only point of interchange in this neighborhood between the Louisville & Nashville Railroad Company and the Tennessee Central was at a station called Vine Hill. Will you state to the Commissioner where that is located with reference to the city of Nashville?

Mr. Barham: It is on the Decatur division of the

Louisville & Nashville Railroad.

Mr. Jouett: Is it or not within the limits of the city of Nashville?

Mr. Barham: It is not.

Mr. Jouett: How far south of the limits?

Mr. Barham: I do not remember the number of miles, but it is beyond the corporate limits.

Mr. Jouett: Something like 2 miles, is it not?

Mr. Barham: Possibly so.

Mr. Jouett: Do you know when it was that the interchange or any interchange was discontinued at that point?

Mr. Barham: I could not answer that question, Mr. Jouett, but it is not my understanding that the Louisville & Nashville carries rates from Vine Hill, and I do not think it ever-I mean from the Tennessee Central from

Vine Hill to Nashville.

545 Mr. Jouett: Do you know there has been no in-

terchange there for several years?

Mr. Barham: That is my understanding; they have not interchanged over there for several years; that the total interchange has been at Shops.

Mr. Jouett: That then cuts no figure out there and

has not for seven years or more?

Mr. Barham: It is not my understanding it cuts any figure at all.

Mr. Gwathmey: Have you before you, Mr. Barham, Complainants' Exhibit Number 12, I think it is, showing comparisons of switching rates at Nashville and certain other places?

Mr. Barham: Yes, sir.

Mr. Gwathmey: From such inspection as you have been able to make of that exhibit do you think it fairly

represents actual switching charges?

Mr. Barham: Not entirely actual. It shows \$2.00 at Atlanta. We have three separate and distinct charges there. In some instances it is \$2.00, in other instances it is 20 cents a ton and in other instances 30 cents a ton. It is wrong as to Chattanooga.

Mr. Henderson: Where are those different 546 charges published by the Nashville, Chattanooga

& St. Louis?

Mr. Barham: Chattanooga \$2.00, \$2.50 and \$5.00 per car.

Mr. Henderson: What tariff?

Mr. Barham: Our tariff. Mr. Henderson shows at

Chattanooga \$2.00.

Commissioner Meyer: Can we not save time by having Mr. Barham make a statement showing each of those points?

Mr. Henderson: I checked these from the tariff.

Mr. Barham: I did not intend to say you did not intend to make them correct.

Mr. Gwathmey: You can make up a statement? Mr. Barham: Yes, sir.

Commissioner Meyer: I think we can save time that

way.

Mr. Gwathmey: Mr. Barham, Mr. Bruce filed certain maps or charts showing the location and number of industries on the several lines in Nashville. Have you examined those maps or charts filed by Mr. Bruce?

Mr. Barham: I have, yes, sir.

Mr. Gwathmey: You say you have?

Mr. Barham: I have.

Mr. Gwathmey: What is your information as to the accuracy of the information shown thereon?

Mr. Barham: I understand they are correct. 547 Mr. Gwathmey: Are you in a position to know if they are correct or not?

Mr. Barham: No; not by personal survey.

Mr. Gwathmey: You do know the general conditions, do vou not?

Mr. Barham: I do not think they can be materially

wrong, if at all.

Mr. Gwathmey: Mr. Barham, will you check up those figures and file a statement with the Commission showing whether or not they are correct and if incorrect in what respect?

Mr. Jouett: That only relates to the industries.

Mr. Barham: Of course I understand that you now speak purely of industrial side tracks.

Mr. Jouett: Yes, sir.

Mr. Barham: That you do not speak of main line leads to a private switch; that you are not speaking of belt line mileages, or any of those things, but merely of the individual side track system and individual industry or industries as far as our line is concerned. I will have it measured by engineers.

Mr. Jouett: It is not a question of measurement.

Mr. Barham: It is a question of measurement;

548 it is shown by car capacity.

Mr. Jouett: That is not what he is talking about. He is talking about the number of industries and how many are on each line. I think you have got that infermation yourself.

Mr. Barham: Not personally. It was compiled largely in my own office; I think it is correct. Of course, within reasonable limits. I will have it checked, though, in any way the counsel or the Commission desire.

Mr. Jouett: We would like to ask you personally to

check it.

Mr. Barham: I would be very glad to go into a joint check with the Tennessee Central Railroad if they wish.

Mr. Jouett: I wish you would do that. That would be the best, Mr. Commissioner. That is the way we did at Louisville. It is very satisfactory. Let the interested lines make up a complete statement.

Commissioner Meyer: Is that agreeable, Mr. Stokes?

Mr. Stokes: Yes, sir.

Mr. Gwathmey: I want to show clearly just what character of side tracks that will cover.

Mr. Stokes: I think these gentlemen can do that.

Mr. Jouett: That is satisfactory, is it gentlemen?

Mr. Henderson: Yes, sir.

CROSS-EXAMINATION.

Mr. Henderson: Mr. Barham, you spoke of these rates quoted in Rule 8, set out in page 17 of the petition. You do not mean to deny that those are actually used as switching rates or switching charges on competitive business received from the Tennessee Central Railroad, do you?

Mr. Barham: I do not mean to deny their use to cover the service of moving from Shops Junction whenever they are used—of course not.

Mr. Henderson: Regardless of how published, they are used for that purpose?

Mr. Barham: My statement of their being erroneously used covers the period from the expiration of the tariff in effect until now. I judge from expense bills I

have seen they must have been used.

Mr. Henderson: I am speaking of up to January 25th, regardless of how those rates were shown and in what tariff they were first published or how they were eventually published, they were actually used as switching charges on competitive traffic received from the Tennessee Central.

Mr. Barham: They were actually used to cover the service of transporting the freight from Shops

Junction.

Mr. Henderson: Well, is not that switching service on competitive freight?

Mr. Barham: That is a question of definition. The

car moved and that was the rate charged.

Mr. Henderson: If the car was delivered to you at Shops Junction by the Tennessee Central Railroad and originated at a competitive point, that was the charge made for the transportation or switching or terminal or whatever you choose to call it?

Mr. Barham: That was the charge made for that

service.

Mr. Henderson: Now you said reciprocal switching was where each line did approximately the same as the other?

Mr. Barham: Yes, sir.

Mr. Henderson: And that your interchange about balances up with all your connections. Now how many

lines are there at Memphis?

Mr. Barham: Oh, I don't know offhand. The balance of switching is against the Nashville, Chattanooga & St. Louis at Memphis, if that is the point you are trying to make.

Mr. Henderson: Have you any idea how many 551 lines there are in there?

Mr. Barham: Eight or ten.

Mr. Henderson: Do you have a reciprocal switching

Mr. Barham: Yes.

Mr. Henderson: Does your tonnage balance up with arrangement with each of them?

Mr. Barham: I already made the statement the bal-

ance is against us at Memphis.

Mr. Henderson: How many lines are there at Atlanta?

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Mr. Hetaleteon, Are those the sales free ground in connection you have out the first section of

Mr. Barbam: Item

Mr. Henderson Species 2 2 2 2 1 1 1 1 1 1 1 1 1 1 making rates between any points and and measurement as include the cost of terminal service at the point of origin and at destination in the rate?

Mr. Barham: The amount of money that you would get for the service would necessarily include the terminals.

Mr. Henderson: And that is generally considered in

making the rates?

Mr. Barham: I would not like to say I ever specifically figured a terminal service in the making of a rate; that would be rather too large a statement.

Mr. Henderson: But you consider that expense in

making rates, do you not?

Mr. Barham: Yes sir. Now, Mr. Henderson, if you are getting at the point of costs I want to make myself plain. I think all the costs that have been given

554 here are outrageously underestimated. My own opinion is it costs vastly more than \$4.13 to switch an average car in the city of Nashville. I believe, and I believe I can demonstrate it to any man in the world, that a movement from Florence to Murphysboro, which is 8 miles, will cost the Nashville, Chattanooga & St. Louis substantially less than an 8-mile movement within Nashville.

Mr. Henderson: Do not your rates from Nashville to Murphysboro include the terminal service at Nashville and the terminal service at Murphysboro?

Mr. Barham: The return we get for handling a shipment from Nashville to Murphysboro will include, of course, whatever it may cost us.

Mr. Henderson: That is all.

Mr. Baxter: Mr. Barham, your opinion is just an

opinion?

Mr. Barham: It is based on many years' experience, Mr. Baxter, based on a very careful consideration of terminal costs in Atlanta, where the conditions are not so dissimilar from these; also based on Nashville where I have been 16 years; also based on when I was chief clerk in the largest terminal in the South, and have some experience in the matter.

555 Mr. Baxter: But your opinion you are now ex-

pressing is not based on each element of cost to make up the cost?

Mr. Barham: Let us analyze one element. Mr. Bruce shows \$542.00, I think, as loss and damage, freight, for a period of six months caused by Nashville Terminals. That is absolutely absurd. If we receive a case of hats from St. Louis or Nashville that is robbed in our station, robbed in the yards, and substantially all the robberies

occur in terminals, not one cent is charged to Mr. Bruce. If Mr. Bruce smashes a car by a rough coupling at Nashville and the shipment checks broken at Murphysboro Mr. Bruce does not pay a cent of it. A very large percentage of all our loss and damage, freight, is caused by handling in terminals and none of it is charged against the terminals.

Mr. Baxter: That may be so. Mr. Barham: Of course it is so.

Mr. Baxter: And so far as your company is concerned that element is also taken into consideration, I believe-I only had the pleasure of reading one of your essays on that subject of making the rates, the element of insurance.

Mr. Barham: The element of insurance is taken in the total rate, but in the allocation of the particular

556 loss, certainly not.

Mr. Baxter: And it is taken care of and paid for not by the Terminal Company nor by you, so far as that is concerned, for that element has already been advanced

in the payment of the rate proper, has it not?

Mr. Barham: As all other elements. You might as well say the Nashville, Chattanooga & St. Louis does not pay my salary because its earnings from freight traffic pay it and, therefore, the shipper pays it. It is precisely the same statement.

Mr. Baxter: That is all.

(Witness excused.)

Mr. Jouett: Mr. Henderson, will you admit the city's ownership of stock in the Tennessee Central is a million dollars, or if that is not correct will you have the city clerk file a statement to that effect?

Mr. Henderson: Mr. Girard is assistant city attorney. Personally I do not know if the city has any stock at all. I know it had a million dollars, but I don't

know now.

Mr. Jouett: Perhaps you can tell us.

Mr. Girard: We will not deny it is a million dollars, but we won't admit its valuation is a million dollars.

557 Commissioner Meyer: Put it this way, a million dollars par value.

Mr. Girard: Yes, sir; and that is held in escrew.

Mr. Jouett: Can we say it is stipulated by the counsel for the complainant that the city of Nashville owns one million dollars par value stock in the Tennessee Central Railroad Company which, however, is held in escrow?

Mr. Baxter: For voting purposes only, the equities of which have already been sold and they have no pecuniary value whatever in the stock.

Mr. Jonett: You mean no pecuniary interest in the

stock?

Mr. Baxter: Interest.

Mr. Jouett: I would like to ask who it is sold to then. That is contrary to what we have been informed in the matter. Perhaps Mr. Baxter can tell us who holds the equity in that stock.

Mr. Baxter: No; I can not, because I have been trying for six months to chase that; but I know it has been

disposed of.

Mr. Jouett: Maybe the general counsel of the Ten-

nessee Central Railroad can tell us.

Mr. Stokes: The general counsel of the Tennessee

Central does not know.

like for it to be considered that I have filed with the Reporter a printed proclamation that was issued by the Mayor of Nashville in the last month or so, that sets forth the ownership of that stock, and I think it calls upon the citizens to do what they can to aid the Tennessee Central Railroad Company. I am not sure that that is the purport of it. I thought we had a copy of it, but do not seem to have it here. I would like to file that. It is a public record here.

Commissioner Meyer: There could be no objection to

your filing it.

Mr. Baxter: I wish you would be kind enough though to give me the issue of the paper that made the proclamation, because I do not remember it.

Mr. Jouett: We will give you the full information,

including a copy of it, and the authority for it.

Now we would like to ask Mr. Stokes just to make the statement he made to the Commissioner.

Mr. Stokes: My understanding is that the city of Nashville subscribed a million dollars of face value of

capital stock of the Tennessee Central Railroad 559 and in payment of that turned over its bonds in equal amount. That is a piece of common knowledge. There is no dispute about it.

Mr. Jouett. Mr. Stokes is the general attorney of the

Tennessee Central Railroad.

JOHN T. Lewis was called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Stokes: Mr. Commissioner, I have no disposition to go into great detail in examining this witness. My purpose in putting him on was simply to clear up some matters that have gotten into the record so far as the Tennessee Central is concerned under a misappre-

Mr. Lewis, what is your position with the Tennessee Central Railroad?

Mr. Lewis: Terminal agent.

Mr. Stokes: You have charge of the Nashville Terminal Company that is operated by the Tennessee Central Railroad Company?

Mr. Lewis: Yes, sir.

Mr. Stokes: Mr. Henderson in his eloquence spoke of there being no grades in these terminal 560

yards. State the facts about that, please.

Mr. Lewis: There are some very heavy grades in these yards, running from 1.6 per cent up to 8 per cent; 8 per cent is on Front Street. The grade is so great that it is necessary to chain every car that is placed there with anchor chains, and also chuck the wheels.

Mr. Stokes: You can not hold them there with

brakes?

Mr. Lewis: No, sir,

Mr. Stokes: There are other grades over these ter-

minal tracks besides that, are there not?

Mr. Lewis: Yes, sir; there is the maximum grade between what we call Central Junction and Busch Park yard which is 2.35 per cent, and then we have a grade between Vine Hill and Pittsfield going west of 1.22 per cent, and then we have a grade between Woodward and Von Blarcom of 1.6 per cent; there are several other grades that I did not get the percentage of that are on North Front Street.

Mr. Stokes: Mention has been made in the evidence, Mr. Lewis, about this switching charge of \$2.00 a car from Baxter Heights to the Hermitage Elevator. What is the distance from Baxter Heights to the Hermitage Elevator?

561 Mr. Lewis: It is 1.7 miles.

Mr. Stokes: What is that movement that is made Just describe to the Commissioner the situation there? there.

Mr. Lewis: Why, it is a movement of grain that goes to the elevator, which is a straight run from Baxter Heights to the elevator and a straight drop from the cars into the elevator, and then practically every car comes

back loaded, and it is a \$2.00 movement each way, which is practically a \$4.00 switching movement on the car.

Mr. Stokes: I will get you to state if the business that comes out of the Hermitage Elevator is not such that the grain they can not get out except they bring it out over the Tennessee Central Railroad, and that they do not sell any there in that community that is hauled away by wagons or taken away in any other way?

Mr. Lewis: It is practically impossible to reach it by

wagons.

Mr. Stokes: And all of the grain you get a double haul on?

Mr. Lewis: Yes, sır.
Mr. Stokes: 1.7 miles?
Mr. Lewis: Yes, sir.

Mr. Stokes: Now the number of cars you carry from Baxter Heights to the Hermitage Elevator, do you

562 carry few or many?

Mr. Lewis: Well, we have taken in one drag anywhere from five to as high, I think, as 17 or 18 cars.

Mr. Stokes: That is just one movement.
Mr. Lewis: That is one movement.

Mr. Stokes: And it is \$2.00 hauling it in?

Mr. Lewis: Yes, sir.

Mr. Stokes: And you get it when it comes out of the elevator, the \$2.00 back?

Mr. Lewis: Yes, sir.

Mr. Stokes: Where is the place of McLemore-Crutcher?

Mr. Lewis: That is in what is known as the Go Ahead switch in the alley.

Mr. Stokes: That is down here in Front Street near the depot, is it not?

Mr. Lewis: Yes, sir.

Mr. Stokes: How far is that in miles from Baxter Heights?

Mr. Lewis: That is a little over 9 miles; about 9.1

or a little over.

Mr. Stokes: How many movements do you have to make with a car being shipped from Baxter Heights to McLemore-Crutcher?

563 Mr. Lewis: It is handled by three distinct switch engines or crews.

Mr. Stokes: Describe how that is done.

Mr. Lewis: What we call the belt engine will take the car at Baxter Heights, move it to Southern Junction; that car moves, of course, in the regular string of cars that comes in, probably anywhere from 10 to 30 cars

in the string. That is broken up in the yard at Southern Junction by the yard engine there, then the downtown engine must take it and bring it down to the Basin Alley switch and place it; so it is handled by three switch engines in making the movement.

Mr. Stokes: What is the character of the business that McLemore-Crutcher do? Do they sell their stuff to the city trade or do you get back all the cars from there

loaded again?

Mr. Lewis: We have but a very very small movement out. As far as carload movement is concerned I do not recall in the past two or three years more than-I do not know-maybe eight or ten cars on a rough guess; it may be more than that, because I don't see each one individually.

Mr. Stokes: They sell to the city trade here?

Mr. Lewis: Principally, yes.

564 Mr. Stokes: Mr. Lewis, how many industries are located on the terminals are local to the Tennessee Central?

Mr. Lewis: In a rough count which I made this morning, which is approximately correct, I figure that there are 169.

Mr. Stokes: How many?

Mr. Lewis: 169; 111 of these are served exclusively by the Tennessee Central and 58 are served jointly by the Louisville & Nashville, Nashville, Chattanooga & St. Louis and Tennessee Central road.

Mr. Stokes: Will you make a list of those various industries, giving the location and also the character of business conducted there, and file it in connection with your evidence?

Mr. Lewis: I will.

Mr. Stokes: How much space has the Terminal Company operated by the Tennessee Central for cars? How many cars can you take care of?

Mr. Lewis: About 2,100; 2,101, I think is the actual

count.

565

Mr. Stokes: That is all, sir.

CROSS-EXAMINATION.

Mr. Gwathmey: How many of the industries that you mention are located on Front Street?

Mr. Lewis: On Front Street? Mr. Gwathmey: Yes.

Mr. Lewis: I don't know; I couldn't tell you exactly from count; I should say that there was in the neighborhood of 30 from Clark Street—I think it is Clark Street down to Broad.

Mr. Gwathmey: Of those industries how many have an actual frontage on the railroad tracks of more than one car length?

Mr. Lewis: It is either three or four; I am not sure

which, more than one car length.

Mr. Gwathmey: So the majority have a frontage of

less than one car length?

Mr. Lewis: Not less than one car; one car length. They all have one car length. There are three or four that have more than one car length. For instance, the Brandon Printing Company have two or three. Lipscomb have two, Derryberry have two.

Mr. Gwathmey: Are there not many concerns there

have not more than 25 feet frontage?

Mr. Lewis: I do not know what the frontage is, but we place cars for every industry or jobbing firm that is on the street.

Mr. Gwathmey: Let me put it this way: do you think you can place at any one time as many cars on that street as you have named firms located on

that street?

Mr. Lewis: No; I do not believe I could.

Commissioner Meyer: Now I think you ought to tell us how often all the firms receive a car at the same time.

Mr. Lewis: Well, we have very little trouble with

that, Mr. Commissioner.

Commissioner Meyer: Well, I was not very serious

about that.

Mr. Lewis: For the reason we make two switches there a day and they give way to one another; one will take the morning switch and the other will take the afternoon.

Mr. Stokes: I forgot to ask you the mileage.

Mr. Lewis: We average approximately 21 miles in

the terminals.

Mr. Henderson: I simply want to make the statement for my own benefit more than anything else, that in making my statement yesterday as to the grade I did overlook Front Street. I know there is some grade there myself, but it is off of the main terminals.

Mr. Lewis: That is where we do the biggest part of

our switching.

Mr. Henderson: But it is not on your main terminal?

567 Mr. Lewis: We call it on the terminal.

Mr. Henderson: Yes, I understand. I just wanted to correct that for my own satisfaction.

Mr. Lewis: There are several other pretty good ones.

Mr. Henderson: Not like that.

Mr. Lewis: You go to the National Railway & Light Company and you will strike it pretty near as bad. I would say, without the actual figures, we have 4.5 or 5 per cent there.

Mr. Baxter: Mr. Lewis, a great many of those stores which were facetiously referred to have side tracks in-

side of the stores, have they not?

Mr. Lewis: No. sir.

Commissioner Meyer: Is there anything else? That seems to be all, Mr. Lewis.

(Witness excused.)

Commissioner Meyer: Have you any other witnesses?

Mr. Stokes: No. sir.

Mr. Baxter: Mr. Commissioner, I understood this morning we had a right to cross-examine, in order to save time on Exhibit Number 8, the elements of cost.

Commissioner Meyer: I understand that you and opposing counsel have reached an agreement 568with respect to that and that is entirely satisfactory to the Commission.

Mr. Baxter: Now as to the limited time for that cross-examination and reply to the cross questions that they want to put.

Mr. Jouett: What have you to suggest about it, Mr.

Baxter? Whatever you suggest.

Mr. Baxter: I suggest we be allowed 10 days and you 5 days after to cross, and then submit it to the witness and let him answer the original and cross at the

same time, just like he would on interrogatories.

Mr. Jouett: Well, 5 days is rather short for us, because it will probably take just about as much investigation, and we have to make our engagements to get together, and I am going to be away for the next 40 days. I do not expect that to delay it, but if they have 10 days I would like 10 days also.

Mr. Baxter: I am perfectly willing you have 10 days, but wish that the original and cross be both submitted

at the same time.

Mr. Jouett: You mean submitted for answer? Mr. Baxter: Yes.

569 Mr. Jouett: But we can not cross yours until we get them.

Mr. Baxter: No. You do it on interrogatories.
Mr. Jouett: You give us the interrogatories.

Mr. Baxter: And you have 10 days in which to cross those cross interrogatories, and the originals and cross interrogatories to be forwarded to the witness for him to answer.

Mr. Jouett: That is agreeable.

Mr. Baxter: And no briefs are to be required until the witness answers.

Mr. Jouett: Of course not.

Commissioner Meyer: Well, the witness, of course, will answer within the limits of time that you gentlemen have agreed upon. I do not see how the Commission can well extend the dates for briefs pending the filing of this statement.

Mr. Jouett: By consent, can we not, Mr. Commissioner, of both parties? The Commission probably is not interested in hurrying the hearing. In other words, to avoid another hearing, if we adjourn this hearing for 20 days to finish the proof in the interrogatory form ought we not to consider the case finished then and let

the Commission fix the briefs beyond then, whatever is thought proper by the Commission?

Commissioner Meyer: That would probably postpone the argument quite a long time.

Mr. Jouett: Yes.

Commissioner Meyer: But as I understand your agreement here is that information will be in hand a week or ten days before the time for filing the first brief.

Mr. Jouett: I do not know. I thought you might fix

a time so many days after these 20 days.

Commissioner Meyer: That means the case can not be argued until next fall.

Mr. Jouett: I know Mr. Baxter and I are both very

busy this spring.

It is understood that a number of exhibits were referred to by Witness Keeble and by other witnesses for the defendants, copies of which exhibits were not at hand for distribution at the time the testimony was offered. It is agreed as to these that the exhibits may be filed with the Reporter as if filed at the hearing, and two copies of each of such exhibits ought to be furnished to the complainant.

It is further stipulated that the interrogatories to be propounded by the complainants to Witness Bruce in regard to the exhibit showing cost of switching service ought to be prepared by complainants and

furnished to defendants on or before April 6, 1914. There-

upon the defendants are given until April 16th in which to prepare their cross interrogatories, such interrogatories and cross interrogatories to be forthwith furnished to this witness, who is to prepare his answers and file same with the Commissioner, giving copies thereof to the parties hereto on or before June 1, 1914.

Commissioner Meyer: It is also understood that complainants' brief will be filed July 1, 1914, defendants' brief September 1, 1914, and complainants' reply Sep-

tember 20, 1914.

Argument is tentatively set for the first week of ar-

gument before the Commission in October. 1914.

Whereupon at 5:45 P. M., on the 26th day of March, 1914, the hearing in the above entitled matter was closed.

EXHIBIT E FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE, CONTRACT OF LEASE, DATED APRIL 27, 1896, BE-TWEEN N., C. & ST. L. RAILWAY COMPANY, L. & N. TERMI-NAL COMPANY AND L. & N. RAILROAD COMPANY.

THIS INDENTURE, made this 27th day of April, 1896, by and between the Louisville & Nashville Railroad Company, a corporation chartered, organized and existing under the laws of the State of Kentucky, and known hereinafter as the first party; the Louisville & Nashville Terminal Company, a corporation chartered, organized and existing under the laws of the State of Tennessee. and known hereinafter as the second party; and the Nashville, Chattanooga & St. Louis Railway, a corporation chartered, organized and existing under the laws of the State of Tennessee, and known hereinafter as the third party, WITNESSETH:

ARTICLE I.

The said first party hath letten, and by these presents doth grant, demise and to farm let unto the said second party, its successors and assigns, the following described pieces or parcels of land, situated in the city of Nashville, County of Davidson and State of Tennessee,

and bounded and described as follows, viz.:

No. 1—A lot of land beginning at a stake on the south side of Gay Street, the northeast corner of a tract of land owned in 1858 by Wm. Copers and running thence southerly at right angles 110 feet more or less to an alley; thence in an easterly direction with said alley 38 feet; thence in a northerly direction 110 feet to a point on the south line of Gay Street; thence in a westerly direction 38 feet to the place of beginning.

No. 2—A triangular lot beginning at a point on the south side of Gay Street, at the intersection of the east line of the lot described in description No. 1; thence in a southerly direction with the west line of lot described in description No. 1 twenty-five feet; thence in a north-easterly direction 25 feet more or less to a point on the south side of Gay Street, 4 feet east of the east line of lot described in description No. 1; thence in a westerly direction with the south line of Gay Street 4 feet to the point of beginning.

No. 3—A lot or parcel of land being all of lot No. 2 and 18½ feet off of the east side of lot No. 4 of the B. M. Barnes Addition to the City of Nashville, fronting 52 feet on the north side of Pearl Street and extending north between parallel lines 110 feet more or less to an

alley.

No. 4—A lot or parcel of land beginning at a point on the south line of Pearl Street, being the northwest corner of the land originally owned by H. Murray; thence southerly, at right angles to Pearl Street 60 feet; thence westerly, parallel to Pearl Street 15 feet; thence southerly at right angles 165 feet 7 inches more or less to the north line of Shankland Street; thence in a westerly direction with the north line of Shankland Street 80 feet; thence in a northerly direction, at right angles, 225 feet 7 inches more or less to the south line of Pearl Street; thence in an easterly direction with the south line of Pearl Street, 95 feet to the point of beginning.

No. 5—A lot or parcel of land beginning at a point on the north line of Cedar Street 138.1 feet easterly from the east line of Belleville Street; thence running northerly parallel with Belleville Street 248 feet to the south line of Shankland Street thence easterly along the south line of Shankland Street 35 feet; thence southerly at right angles 68 feet; thence westerly parallel with Cedar Street 11 feet; thence in a southerly direction 180 feet to Cedar Street; thence in a westerly direction with the north line of Cedar Street, 24 feet to the place of beginning.

ginning.

No. 6—Also the railroad and right of way on which the same is constructed from the south line of Gay Street over the lots above described and across Pearl and Shankland and Cedar streets to the south line of Cedar Street.

TO HAVE AND TO HOLD the said premises, with the appurtenances thereunto belonging, including all rights of way, ways, and other easements, unto said second party, its successors and assigns for the term of nine hundred and ninety-nine years from the 1st day of May, 1896.

ARTICLE II.

Said first party doth hereby for itself, its successors and assigns, covenant with said second party, its successors and assigns that it and they, paying the rent hereinafter reserved, and performing the covenants hereinafter on its and their part contained, shall and may peaceably possess and enjoy the premises described in the First Article, for the term granted in said first Article, without any interruption or disturbance from said first party or its successors or assigns, or any other person, or persons whomsoever lawfully claiming by, from or under said first party or its successors or assigns.

ARTICLE III.

Said first party doth hereby for itself, its successors and assigns, covenant with said second party, its successors and assigns, that said first party, its successors and assigns, will on or before the expiration of the term in the first Article granted, at the request and expense of said second party, its successors or assigns, grant and execute to it, or them, a new lease of the premises demised and described in the first Article, together with their appurtenances, for the further term of nine hundred and ninety-nine years, to commence from the expiration of said term in the first Article granted, at the same yearly rent, payable in like manner, and subject to the like covenants, provisos and conditions (except a covenant for further renewal) as are contained in these presents, in relation to said premises.

ARTICLE IV.

Said first party doth hereby for itself, its successors and assigns, covenant with said second party, its successors and assigns, that said first party, its successors and assigns, will, henceforth, during the residue of the term granted in the First Article, and during the residue of the term that may be granted in any new lease which may be executed as provided in the third article, upon every reasonable request, and at the cost of said second parties, its successors or assigns, make, do and execute, or cause to be made, done and executed, all such reasonable acts, deeds, and assurances in the law whatsoever, for the further, better or more satisfactorily granting, demising and assuring the said premises or any part

thereof, described in the first Article, together with their appurtenances, unto said second party, its successors and assigns for the then residue of the term granted in said first article, or for the then residue of the term that may be granted in any new lease which may be executed, as provided in the third article as by said second party, its successors or assigns, or its of their counsel in the law shall be reasonably required, and be tendered to be made, done and executed.

ARTICLE V.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its successors and assigns, that as rent for the premises and their appurtenances, described in the first article, for the term granted in said first article, and for the term that may be granted in any new lease which may be executed as provided in the third article, said second party, its successors and assigns, will pay to said first party, its successors and assigns, the yearly sum of

dollars, to be paid in equal quarterly payments on the first days of October, January, April and July in each and every year.

ARTICLE VI.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its successors and assigns that said second party, its successors and assigns, shall and will during the term granted in the first article, and during the term that may be granted in any new lease which may be executed, as provided in the third article, at its and their proper cost and charge, well and sufficiently keep in repair, when and as often as the same shall require, the premises described in said first article, together with their appurtenances, including all rights of way, ways, and other easements, and all such main and side railroad tracks, switches, cross-overs and turnouts, and all such other terminal facilities, as may be hereafter erected, or constructed, upon the premises described in the first article.

And also, that in case the same, or any part thereof, shall, at any time during said term, be destroyed or injured by fire, wind or lightning, said second party, its successors and assigns, shall and will, at its and their proper cost and charges, forthwith proceed to rebuild or repair the same, in as good condition as the same were

before such destruction or injury.

ARTICLE VII.

Said second party both hereby, for itself, its success ors and assigns, covenant with said first party, its successors and assigns that it shall be lawful for said first party, its successors or assigns, by its or their agent, or agents, at all seasonable times during the term granted in the first article, and during the term that may be granted in any new lease which may be executed, as provided in the third article, to enter upon the premises described in the first article, and to examine the condition of the said premises; and further, that all wants of reparation, which, upon such views, shall be found, and for the amendment of which notice in writing shall be left at the premises, said second party, its successors and assigns, shall and will, within three calendar months next after every such notice, well and sufficiently repair, and make good accordingly.

ARTICLE VIII.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its successors and assigns, that said second party, its successors and assigns, shall and will, during the term that may be granted in the first article, and during the term that may be granted in any new lease which may be executed, as provided in the third article, pay and discharge all taxes, rates, duties and assessments whatsoever, which shall be taxed, assessed, levied, imposed or charged upon the premises described in the first article, or any part thereof, or their appurtenances, or which may, on account thereof, be taxed, assessed, levied, imposed or charged upon said first party, its successors or assigns.

ARTICLE IX.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its successors and assigns, that, at the expiration of the term granted in the first article, or at the expiration of the term that may be granted in any new lease which may be executed as provided in the third article, or at any sooner termination of this present lease, of any such new lease, said second party, its successors and assigns, shall and will peaceably surrender and yield up unto said first party, its successors and assigns, the premises described in the first article, with their appurtenances.

ARTICLE X.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its suc-

cessors and assigns that if the rents reserved in the fifth article, or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or, in case of the breach of non-performance of any of the covenants, provisos, or conditions herein contained on the part of the said second party, its successors and assigns, then it shall be lawful for said first party, its successors or assigns, at any time thereafter, into and upon the premises described in the first article, or any part thereof, in the name of the whole, to re-enter, and the same again repossess, and enjoy, as of its or their former estate, anything hereinbefore contained to the contrary notwithstanding.

ARTICLE XI.

Inasmuch as the property by this lease demised was acquired in pursuance of an agreement dated May 1, 1872, between the Nashville & Chattanooga Railroad Company and the first party, and by reason thereof the third party, which is the successor to said Nashville & Chattanooga Railroad Company, is entitled to certain rights in the demised property, the third party hereby joins in this lease for the purpose of granting and demising to the second party, for so long a time as this lease may continue in force and for such further time as any new lease executed under Article third may continue in force, all rights which it, the said third party, is entitled to in the said demised property.

IN WITNESS WHEREOF, the said parties hereto have caused these presents to be signed by their respective Presidents or Vice-Presidents, attested by their respective Secretaries or Assistant Secretaries, and their respective corporate seals to be hereunto affixed, the date

above written, in duplicate originals.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY, By M. H. SMITH, President.

Attest:

J. H. Ellis, Secretary.

LOUISVILLE & NASHVILLE TERMINAL COMPANY, By M. H. SMITH, President.

Attest:

J. H. Ellis, Secretary.

Nashville, Chattanooga & St. Louis Railway, By J. W. Thomas, President.

Attest:

J. H. Ambrose, Secretary.

THIS INDENTURE, made this 27th day of April, 1896, by and between the Nashville, Chattanooga & St. Louis Railway, a corporation chartered, organized, and existing under the laws of the State of Tennessee, and known hereinafter as the first party; the Louisville & Nashville Terminal Company, a corporation chartered, organized, and existing under the laws of said State, and known hereinafter as the second party; and the Louisville & Nashville Railroad Company, a corporation chartered, organized, and existing under the laws of the State of Kentucky and known hereinafter as the third party, WITNESSETH:

ARTICLE I.

That said first party hath letten, and by these presents does grant, demise and to farm let unto the said second party, its successors and assigns, the following described pieces or parcels of land, situated in the City of Nashville, County of Davidson and the State of Tennessee, and bounded and described as follows, viz.:

Beginning at the northeast corner of Church and McCreary streets; running thence eastward with the north line of Church Street 435.2 feet to the southwest corner of a 45 foot lot owned by Jas. McKeon; thence northwestward parallel with Walnut Street and with said McKeon's west line, which is the east line of a lot sold by T. P. Brady to the first party, by deed recorded in book 83, p. 134, register's office of Davidson County, 178.3 feet to McKeon's northwest corner, being the southwest corner of a lot sold by Jas. McKeon to the first party, by deed recorded in book 39, page 603, Register's office of Davidson County, thence eastward at right angles 45 feet with McKeon's north line to said McKeon's northeast corner; thence southward parallel with Walnut Street and with McKeon's east line 175.8 feet to a point in the north line of Church Street 480.2 feet east of McCreary Street; thence eastward with the north line of Church Street 292.8 feet, more or less to the northwest corner of Church and Walnut streets; thence northward with the west line of Walnut Street 1,048.5 to the southwest corner of Cedar and Walnut streets: thence westward with the south line of Cedar Street 454 feet to the northeast corner of the Lusk property, which is 463 feet eastward from the southwest corner of Cedar and Mc-Creary streets; thence southward with the line between the Lusk property and the lot sold to the Nashville & Chattanooga Railroad Company by Vannoy Turbeville & Co., by deed recorded in book 32, page 165, Register's

office of Davidson County, 643.5 feet, more or less to the north line of the property sold by Jno. Baird to the Nashville & Chattanooga Railroad Company by deed recorded in book 39, page 599, Register's office of Davidson County; thence westward with said line 165.4 feet, more or less, to the southwest corner of the Lusk property, which is the southeast corner of lot No. 114, Hynes Addition, sold by Capers Chapel to the first party by deed recorded in book 104, page 461, Register's office of Davidson County; thence northward with the line between said lot 114 and the Lusk property 145 feet more or less, to the south line of Hynes Street; thence westward with the south line of Hynes Street 215 feet, more or less, to the southeast corner of Hynes and McCreary streets; thence southward with the east line of McCreary Street 70 feet more or less to the line between lots 112 and 113, Hynes Addition; thence eastward with said line 145 feet to the west line of said lot 114; thence southward parallel with and 145 feet from the east line of McCreary Street with the line between the said John Baird property, and Hynes Addition, 245 feet, more or less, to the northeast corner of lot 117, Hynes Addition; thence westward with the line between lots 117 and 116, Hynes Addition, 145 feet to the east line of McCreary Street; thence southward with the east line of McCreary Street 225 feet to the beginning point.

No. 2. Beginning at a point in the north line of Broad Street 80.3 feet west of its intersection with the west line of Walnut Street running thence northward with the west side of a stone wall 242.5 feet; thence eastward 67 feet to a point in the west line of Walnut Street distant 234.5 feet from the north line to Broad Street; thence northward with the west line of Walnut Street 793.1 feet to the southwest corner of Church and Walnut streets; thence westward with the south line of Church Street 619.3 feet to the east line of Hynes Addition; thence southward 347.5, more or less, to the north line of Grundy Street; thence eastward with the north line of Grundy Street 7 feet, thence southward, along the east line of lots 206, 207, and 13 of McNairy's addition 660.2 feet to the north line of Broad Street; thence eastward with the north line of Broad Street 498 feet, more or less,

to the beginning.

No. 3. Lots 69, 71 and 73 of McNairy's plan of West Nashville, fronting 150 feet on the south side of McGavock Street, and running back between parallel lines at right angles thereto 166 feet to a twelve foot alley, being the same lots conveyed to the first party by deeds

as follows: lot 69, by Chancery Court decree, recorded in book 160, page 181, Register's office of Davidson County; lot 71 by C. D. Berry and wife, by deed recorded in book 69, page 273, Register's office of Davidson County; and lot 73 by W. H. Fletcher and wife, by deed recorded in book 79, page 148, Register's office of Davidson County. Also lot No. 138 McNairy's plan of West Nashville, described as follows: beginning at the northwest corner of Demonbreun Street and the old middle Franklin turnpike; thence westward with the north line of Demonbruen Street 34.8 feet to the southeast corner of lot No. 139; thence northward with the line between lots 139 and 139, 166.2 feet to a 12 foot alley; thence eastward with the south line of said alley 145.4 feet to the west line of seid turnpike; thence southward with said west line of said turnpike, 200 feet, more or less, to the beginning, being the same lot conveyed to the first party by Rob't Ewing, C. & M. by deed recorded in book 68,

page 465, Register's office of Davidson County.

Also beginning at a point in the Southern line of Broad Street 20 feet west of the centre line of the main track of the N. C. & St. L. R'y and in the line of the right of way of said road; thence southward parallel with said railroad, and 20 feet therefrom, 629.5 feet, more or less, to a point in the south line of old middle Franklin turnpike 20 feet west of the center line of the main track of the N. C. & St. L. R'y, which point is the northwest corner of lot No. 1 in the McClain plan of lots, which plan is registered in Book 21, p. 44, Register's office of Davidson County, running thence southward along said line of said turnpike 250 feet to the southwest corner of lot No. 4 of said McClain plan, where there is an offset in said line of said turnpike; thence eastward with the south line of said lot 4, and with the said off-set in said turnpike line 14 and 1/2 feet to the line of said turnpike, where it was fifty feet wide; thence southward with the said line of said turnpike 881 feet to the southwest corner of a lot sold by S. G. Moore and wife and others to the first party by deed recorded in Book 47, page 265, Register's office of Davidson County; thence eastward with the south line of said last named lot, 532 feet, more or less, to the center line of Overton Street, if extended, 170 feet more or less, to the southwest corner of a lot sold by Wm. Woodfolk to the first party by deed recorded in book 69, page 274, Register's Office of Davidson County, which corner is the same as point C described in said deed; thence, eastward with the south line of the last named lot, passing through the northwest corner

of the Lanier Mill building, 198 feet, more or less, to a point in the face thereof about 14 feet from said corner. and 48 feet, more or less, distant from the center line of the main track of the first party; thence, southwardly, along the face of said mill, 163 feet to an angle therein. which is 33.9 feet from the center of said main track; thence, southwardly along the face of said mill, parallel with the said railroad and 33.9 feet from its center line 171.5 feet, more or less, to a point in the center of what was formerly Hay Street; thence south with the said center line of Hay Street 104 feet, more or less, to the north line of a ten foot alley, which runs parallel to Gleaves Street; thence eastward, along the north line of said alley 168 to the west line of a twelve foot alley; thence northwardly along said line 101/2 feet, more or less, to the right of way of the N. C. & St. L. R'y 20 feet from the center line of the main track of the same; thence southeastward along said right of way line 272 feet, more or less, to the northwest corner of Gleaves and Spruce streets; thence northward, with the west line of Spruce Street 87 feet, more or less, to the line of the right of way of said railroad, 30 feet from its center line; thence northwestward along said right of way line, 240 feet, more or less, to the west line of a twelve foot alley, at a point 20 feet northeastward from the center line of said railroad; thence northward with the west line of said alley 93 feet, more or less, to the northeast corner of a lot conveyed to the first party by Rob't Ewing, C. & M., by deed recorded in book 68, page 263, Register's office of Davidson County; thence westward with the north line of said lot passing through the Nashville Mills Bldg. 136 feet, more or less, to a point in the face thereof, 25.5 feet from the center line of the main track of said railroad; thence northwestward, parallel with said railroad, and along the face of said mill, 112 feet, more or less, to the northwest corner of said mill building; thence northeastward at right angles to the face of said mill, 13 inches, more or less, to the northern face of a brick boundary wall erected by the first party; thence northwestward, along the face of said wall parallel with said railroad, 106 feet, to an offset thence southwestward, at right angles, along said offset, 12.5 feet, to the face of said wall at a point 14 feet from the center line of the main track of said railroad; thence northwestward, along the face of said wall 80 feet to a point 13.4 feet from the center of said main track at the point of curve of same; thence northward along said wall in a curve to the right, 200 feet to a point 14.4 feet from said center

line; thence northward along said wall 200 feet to a point 14.1 feet from said center line; thence northward along said wall 160 feet to a point 13.7 feet from the center of said railway at the point of tangent thereof; thence northward with the face of said wall in a straight line along the line of an alley and south Walnut Street 1,325 feet, more or less, to its intersection with the south line of Broad Street to a point 20.5 feet from the center line of said main track; thence with the southern line of Broad Street 40.5 feet to a point in the right of way line 20 feet west of the center line of said railroad to the beginning.

All of the pieces or parcels of land above described in this article are more clearly shown on the plats which

are hereto attached and made part hereof.

Also rights of way, railroad tracks, and property of every other description which the first party has in or across Cedar Street east of the west line of Belleville Street, and all rights of way, railroad tracks and property of every other description, which the first party has in or across Church Street and in or across Broad Street.

TO HAVE AND TO HOLD the said premises, with the appurtenances thereto belonging, including all rights of way, ways and other easements, all passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings erections, and structures, all main and side railroad tracks, switches, cross-overs and turn-outs, and all other terminal facilities now located upon said premises or any part of portion thereof, unto said second party, its successors and assigns for the term of nine bundred and ninety-nine years from the first day of May, 1896.

ARTICLE II.

Said first party doth hereby for itself, its successors and assigns, covenant with the said second party, its successors and assigns, that it and they, paying the rent hereinafter reserved, and performing the covenants hereinafter on its and their part, contained shall and may peaceably possess and enjoy the premises described in the first article for the term granted in said first article without any interruption or disturbance from the said first party or its successors or assigns, or any other person, or persons, whomsoever, lawfully claiming by, from or under said first party, or its successors or assigns.

ARTICLE III.

Said first party doth hereby for itself, its successors and assigns, covenant with said second party, its successors and assigns, that said first party, its successors and assigns, will, on or before the expiration of the term in the first article granted, at the request and expense of said second party, its successors or assigns, grant, and execute to it or them, a new lease of the premises demised and described in the first article together with their appurtenances for the further term of nine hundred and ninety-nine years, to commence from the expiration of said term in the first article granted, at the same yearly rent, payable in like manner, and subject to like covenants, provisos, and conditions (except a covenant for further renewal), as are contained in these presents, in relation to said premises.

ARTICLE IV.

Said first party doth hereby for itself, its successors and assigns, covenants with said second party, its successors and assigns, that said first party, its successors and assigns, will, henceforth, during the reside of the term granted in the first article, and during the residue of the term that may be granted in any new lease which may be executed as provided in the third article, upon every reasonable request, and at the cost of said second party, its successors and assigns, make, do, and execute, or cause to be made, done, and executed, all such reasonable acts, deeds, and assurances in the law, whatsoever, for the further, better, or more satisfactorily granting, demising or assuring, the said premises or any part thereof, described in the first article together with their appurtenances unto said second party, its successors and assigns, for the then residue of the term granted in said first article, or for the then residue of the term that may be granted in any new lease which may be executed, as provided in the third article, as by said second party, its successors or assigns, or its or their counsel in the law, shall be reasonably required, and be tendered to be made. done, and executed.

ARTICLE V.

Said first party doth hereby, for itself, its successors and assigns, covenant with the said second party, its successors and assigns, that said second party, its successors and assigns, without impeachment of waste, and without being liable for the value thereof, but at its or

their own cost and expense, altar or pull down and destroy, all such passenger or freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops and other buildings, erections and structures, as are now located upon the premises or any part thereof, which are described in the first article; and that at the expiration of the term granted in the first article, or at the expiration of the term that may be granted in any new lease which may be executed as provided in the third article, or at any sooner termination of this present lease, or of any new lease, said first party, its successors and assigns, will pay to the said second party, its successors or assigns, in cash, the then fair, and reasonable, value of all such passenger, or freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops and other buildings, erections and structures, and of all such main and side railroad tracks, switches, cross-overs and turn-outs, and of all such other terminal facilities as said second party, its successors or assigns, may have erected or constructed, and which may then be upon the premises, or any part thereof, which are described in the first article.

ARTICLE VI.

The second party doth hereby, for itself, its successors and assigns, covenant with the said first party, its successors and assigns, that as rent for the premises, and their appurtenances, described in the first article, for the term granted in the said first article, and for the term that may be granted in any new lease which may be executed as provided in the third article, said second party, its successors and assigns, will pay to said first party, its successors and assigns, the yearly sum of—dollars to be paid in equal quarterly payments on the first day of October, January, April, and July, in each and every year.

ARTICLE VII.

Said second party doth hereby, for itself, its successors and assigns, covenant with the said first party, its successors and assigns, that the said second party, its successors and assigns, will, with all reasonable dispatch, and during the term granted in the first article, erect and construct upon the premises described in said first article, and upon other premises to be used in connection therewith, all such passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops and other buildings, erections and structures, and

all such main and side railroad tracks, switches, crossovers and turn-outs, and all such other terminal facilities as may be necessary to provide suitable and adequate railroad terminal facilities for such of the railroads entering Nashville, Tennessee, as may contract therefor, with the second party, its successors and assigns.

ARTICLE VIII.

Said second party doth hereby for itself, its successors and assigns, covenant with said first party, its successors and assigns, that said second party, its successors and assigns, shall and will during the term granted in the first article, and during the term that may be granted in any new lease which may be executed as provided in the third article, at its and their proper cost and charges, well and sufficiently keep in repair, when and as often as the same shall require, the premises described in said first article, together with their appurtenances, including all rights of way, ways, and other easements, all such passenger and freight depot buildings, office buildings, sheds, warehouse, roundhouses, shops and other buildings, erections and structures, and all such main and side railroad tracks, switches, cross-overs and turn-outs, and all such other terminal facilities as may be hereafter erected, or constructed, upon the premises described in the first article.

And also, that in case the same or any part thereof shall at any time during said term be destroyed or injured by fire, wind or lightning, said second party, its successors and assigns, shall and will at its and their proper costs and charges, forthwith proceed to rebuild or repair the same in as good condition as the same were before such destruction or injury.

ARTICLE IX.

Said second party doth hereby, for itself, its successors and assigns, covenant with said first party, its successors and assigns, that so soon as the same shall be erected or constructed, said second party, its successors and assigns, shall and will, forthwith insure against loss by fire, all such passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops and other buildings, crections and structures as may be hereafter erected or constructed upon the premises described in the first article; that the same shall be so insured to the full value thereof, in some respectable insurance company or companies; that the same shall be

kept so insured during the term granted in the first article, and during the term that may be granted in any new lease which may be executed as provided in the third article; and as often as the property so insured shall be burned down, or damaged by fire, all and every the sum or sums of money which shall be recovered or received by said second party, its successors or assigns, for or in respect of such insurance, shall be laid out and expended by it, or them, in rebuilding, or repairing the property insured, or such parts thereof as shall be destroyed or injured by fire.

ARTICLE X.

Said second party doth hereby for itself, its successors and assigns, covenant with said first party, its successors and assigns that it shall be lawful for said first party, its successors or assigns, by its or their agent, or agents, at all seasonable times during the term granted in the first article and during the term that may be granted in any new lease which may be executed as provided in the third article, to enter upon the premises described in the first article, and to examine the condition of the said premises; and further, that all wants of reparation, which upon such views, shall be found, and for the amendment of which notice in writing shall be left at the premises, said second party, its successors and assigns, shall and will, within three calendar months, next after such notice, well and sufficiently repair and make good accordingly.

ARTICLE XL

Said second party doth hereby for itself, its successors and assigns, covenant with said first party, its successors and assigns, that said second party, its successors and assigns, shall and will during the term granted in the first article, and during the term that may be granted in any new lease which may be executed as provided in the third article, pay and discharge all taxes, rates, duties and assessments whatsoever, which shall be taxed, assessed, levied, imposed or charged upon the premises described in the first article, or any part thereof, or their appurtenances, or which may, on account thereof, be taxed, assessed, levied, imposed, or charged upon said first party, its successors or assigns.

ARTICLE XII.

Said second party doth hereby for itself, its successors and assigns, covenant with said first party, its successors and assigns, that at the expiration of the term granted in the first article, or at the expiration of the term that may be granted in any new lease which may be executed as provided in the third article or at any sooner termination of its present lease, or of any such new lease, said second party, its successors and assigns, shall and will, peaceably surrender and yield up unto said first party, its successors and assigns, the premises described in the first article with their appurtenances, provided said first party, its successors and assigns, shall have first paid in cash to said second party its successors and assigns, the fair and reasonable value of the buildings, erections and structures, mentioned and provided for in the fifth article.

ARTICLE XIII.

Said second party doth hereby for itself, its successors and assigns, covenant with the first party, its successors and assigns, that if the rents reserved in the sixth article, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made therefor) or in case of the breach, or non-performance of any of the covenants, provisos, or conditions, herein contained on the part of said second party, its successors and assigns, then it shall be lawful for said first party, its successors or assigns, at any time thereafter, into and upon the premises described in the first article, or any part thereof, in the name of the whole, to re-enter and the same again repossess and enjoy as of its or their former estate, anything hereinafter to the contrary notwithstanding.

ARTICLE XIV.

Inasmuch as the third party is entitled to certain rights and privileges in the property by this lease demised, under on agreement dated the first day of May, 1872, between the Nashville & Chattanooga Railroad Company (to which company the first party is the successor) and the third party, the third party hereby joins in this lease for the purpose of granting and demising to the second party, for so long a time as this lease may continue in force, and for such further time as any new lease

executed under article third may continue in force, all rights and privileges which it, the second party, is entitled to in the second party, is en-

titled to in the said demised property.

IN WITNESS WHEREOF, the said party hereto have cause these presents to be signed by their respective Presidents or Vice-Presidents, attested by their respective Secretaries or Assistant Secretaries and their respective corporate seals to be affixed, the date above written in duplicate originals. (Seal.)

Nashville, Chattanooga & St. Louis Railway, By J. W. Thomas, President.

Attest: J. H. Ambrose, Secretary.

(Seal.)

LOUISVILLE & NASHVILLE TERMINAL COMPANY, By M. H. SMITH, President.

Attest: J. H. Ellis, Secy.

(Seal.)

LOUISVILLE & NASHVILLE RAILROAD COMPANY, By M. H. SMITH, President.

Attest: J. H. Ellis, Secy.

EXHIBIT D FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. ACT OF INCORPORATION AND BY-LAWS OF L. & N. TERMINAL COMPANY.

ACT OF INCORPORATION

and

BY-LAWS

of the

LOUISVILLE & NASHVILLE TERMINAL COMPANY.

CHARTER OF INCORPORATION.

State of Tennessee.

Be it known that J. W. Thomas, Ed. Baxter, W. G. Hutcheson, M. H. Smith, and M. J. Reedy, all of whom are over twenty-one years of age, are hereby constituted a body politic and corporate, by the name and style of the Louisville & Nashville Terminal Company, for the purpose of acquiring, constructing, maintaining, operating, or leasing to others, railroad terminal facilities for the accommodation of railroad passengers, and for handling and transferring railroad freight. The general powers of said corporation are as follows:

To sue and be sued by the corporate name; to have and use a common seal, which it may alter at pleasure: if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold, or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment or part payment of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws, and make all rules and regulations, not inconsistent with the laws and the Constitution, deemed expedient for the management of corporate affairs, and to appoint such subordinate officers and agents, in addition to President and Secretary or Treasnrer, as the business of the corporation may require; designate the name of the office, and fix the compensation of the officers.

The following provisions and restrictions are coupled

with said grant of powers:

A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the bylaws of the corporation; the same not, however, to ex-

ceed two years.

The corporation may, by by-laws, make regulations concerning the subscription for or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by the subscribers for stock; the amount to be called for at any one time; and, in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same. The Board of Directors, which many consist of five or more members, at the option of the corporation, to be elected, either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders; their respective interests; the amount which has been paid on the shares subscribed; the transfer of stock, by and to whom made; also other transactions in which it is presumed a stock-

holder or creditor may have an interest.

The amount of any unpaid stock, due from a subscriber to the corporation, shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment, unless his transferee has paid up all or any of

the balance due on said original subscription.

By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted. and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary, but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid: Provided, that the claims of all creditors are to be paid in preference to said withdrawing stockholders.

A majority of the Board of Directors shall constitute a quorum, and shall fill all vacancies until the next elec-The first Board of Directors shall consist of the five or more corporators who shall apply for and obtain the charter. The said corporation may have the right to borrow money, and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

And in addition to the above powers said corporation shall have the power to acquire in this or any other State or States, and at such place or places as shall be found

expedient, such real estate as may be necessary, on which to construct, operate, and maintain passenger stations, comprising passenger depots, office buildings, sheds and storage yards, and freight stations, comprising freight depots, warehouses, offices and freight yards, roundhouses, and machine shops; also main and side tracks, switches, cross-overs, and turnouts, and other terminal railroad facilities, appurtenances, and accommodations, suitable in size, location, and manner of construction, to perform promptly and efficiently the work of receiving. delivering, and transferring all passenger and freight traffic of railroad companies with which it may enter into contracts for the use of its terminal facilities at such place or places. Said corporation shall have the power. by purchase, lease, or assignment of lease, to acquire and hold, and to lease to others, such real estate as may be necessary for the above mentioned purposes of its corporation; and it may also acquire such real estate by condemnation, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in Sections 1325 to 1348, both inclusive, of the Code of 1858, which are as follows, viz.:

1325. Any person or corporation authorized by law to construct any railroad, turnpike, canal, toll bridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein

provided.

1326. The party seeking to appropriate such land shall file a petition in the circuit court of the county in which the land lies, setting forth in substance:

1. The parcel of land, a portion of which is wanted,

and the extent wanted.

2. The name of the owner of such land, or, if unknown, stating the fact.

3. The object for which the land is wanted.

4. A prayer that a suitable portion of land may be decreed to the petitioner, and set apart by metes and bounds.

1327. Notice of this petition shall be given to the owner of the land, or, if a non-resident of the county, to his agent, at least five days before its presentation.

1328. If the owner is a non-resident of the State, or unknown, notice shall be given by publication, as provided in this Code in similar cases in chancery.

1329. All parties having any interest in any way in such land may be made defendants; and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remaindermen being, however, bound by proceedings to which all living persons in interest are parties.

1330. After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess

the damages.

1331. By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk, as, of course, after service of notice, on which the sheriff will summon the jury.

1332. The jurors shall not be interested in the same or similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.

1333. If named by the court, and the persons named are unable to attend when summoned, the place of such

persons shall be supplied by the sheriff.

1334. The jury will consist of five persons, unless the parties agree upon a different number, and either party may challenge for cause, or peremptorily, as in other civil cases.

1335. The sheriff shall give the parties, or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time

has been fixed by the order of court.

1336. The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off by metes and bounds the land required for the proposed improvement, and to inquire and assess the damages.

1337. The jury will then proceed to examine the ground, and may hear testimony, but no argument of counsel, and set apart, by metes and bounds, a sufficient quantity of land for the purposes intended, and assess the

damages occasioned to the owner thereby.

1338. In estimating the damages the jury shall give the value of the land without deduction, but incidental benefits, which may result to the owner by reason of the proposed improvement, may be taken into consideration in estimating the incidental damages.

1339. The report of the jury shall be reduced to

writing, signed by a majority of the jurors, delivered to

the sheriff, and by him returned into court.

1340. If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs.

1341. Either party may object to the report of the jury, and the same may, on good cause shown, he set

aside, and a new writ of inquiry awarded.

1342. Either party may also appeal from the finding of the jury, and, on giving security for the costs, have a

trial anew before a jury in the usual way.

1343. If the verdict of the jury, upon the trial, affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the costs shall be adjudged against such appellant; otherwise, the court may award costs as in chancery cases.

1344. The taking of an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond, with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendants, and conditioned to abide by and perform the final judgment in the premises.

1345. A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done, and, if sued in such case, the plaintiff shall

recover only as much costs as damages.

1346. No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the costs have been actually paid; or, if an appeal has been taken, until the bond has been given to abide by the final judgment as before provided.

1347. If, however, such person or company has actually taken possession of such land, occupying it for the purposes of internal improvement; the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds, and assess the damages, as upon the trial of an appeal from the return of a jury of inquest.

1348. The owners of land shall, in such cases, com-

merce proceedings within twelve months after the land has been actually taken possession of, and the work of the proposed internal improvement begun; saving, however, to unknown owners and non-residents, twelve months after actual knowledge of such occupation, not exceeding three years, and saving to persons under the disabilities of infancy, coverture, and unsoundness of mind, twelve months after such diability is removed, but

not exceeding ten years.

Whenever it may be necessary, in order to enable said corporation to acquire and construct proper railroad terminal facilities in any town or city, or to connect such facilities with the tracks of any railroad company with whom said corporation may have contracted to furnish such facilities, said corporation, with the consent of the proper authorities of such town or city, shall have the right to lay and operate a track or tracks across or along. or over or under such of the streets or alleys of such town or city as may be necessary for that purpose. And said corporation may also; with such consent, construct such passenger or freight depots, or stations, across or along, over or under any such street or alley, when it shall be necessary, in order to furnish proper railroad terminal facilities in said town or city; but no street or alley of any town or city shall be obstructed or interfered with until the consent of the proper authorities of said town or city shall have been first obtained. Said corporation may, from time to time, borrow such sums of money as may be necessary for the acquisition, construction, maintenance, repair, or operation of such passenger or freight depots, or stations and other terminal facilities as are above mentioned, and to issue and dispose of its bonds for such amounts and at such prices as it may think proper, and to mortgage its corporate property, rights, privileges, and franchises for the purpose of securing the same. At any place where said railroad terminal corporation may acquire and construct passenger stations, said corporation may keep on said premises a hotel or restaurant, or both, and also a news stand. The said corporation may lease to any railroad company or railroad companies its freight and passenger depots or stations, and its other terminal facilities. located at any place where the line or lines of said railroad company or companies may terminate, or through which they may pass; and such lease may be upon such terms and for such time as may be agreed upon by the parties. Said railroad company or companies may severally or jointly, or jointly and severally, guarantee the principal

and interest of such bonds as may be issued by said railroad terminal corporation; and may, in like manner, guarantee the performance of any other contract that said railroad terminal corporation may make in regard to its corporate business. Any such railroad company or companies may also subscribe, hold and dispose of the capital stock or bonds which may be issued by said railroad terminal corporation, and said railroad terminal corporation may acquire, hold, and dispose of the capital stock or bonds of railroad companies, or of other terminal companies, for the purpose alone of raising money for the acquisition, construction, maintenance, and repair of such passenger and freight depots and stations, and other terminal facilities as above mentioned, and not for the purpose of speculating in stocks or bonds, or managing or controlling railroads. The right is reserved to repeal, amend, or modify this charter.

We, the undersigned, apply to the State of Tennessee, by virtue of the laws of the land, for a charter of incorporation for the purposes and with the powers, etc.,

declared in the foregoing instrument.

WITNESS OUR HANDS, this 21st day of March, A. D., 1893.

J. W. THOMAS, M. M. SMITH, ED. BAXTER M. J. REEDY, W. G. HUTCHESON.

STATE OF TENNESSEE, Davidson County.

Personally appeared before me, William T. Smith, Clerk of the County Court of said county, J. W. Thomas, Ed. Baxter, W. G. Hutcheson, M. H. Smith, and M. J. Reedy, the within named corporators, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

WITNESS MY HAND, at office, this 21st day of March, 1893.

W. T. SMITH, Clerk of the County Court of Davidson County.

STATE OF TENNESSEE, Davidson County.

I, W. E. Chadwell, Register of said county, do hereby certify that the within instrument, with the application and acknowledgment, were received by me for registration on the 21st day of March, 1893, at 1:40 o'clock P.

M., and were noted for registration in Note Book 12, page 323, and were registered in Charter Book No. 130, pages 363-4-5-6-7-8.

WITNESS MY HAND, at office, this 22d day of March, 1893.

W. E. CHADWELL, Register of Davidson County.

I, WM S. MORGAN, Secretary of the State of Tennessee, do certify that the foregoing instrument, with certificates of acknowledgment of probate and registration, was filed in my office for registration on the 22d day of March, 1893, and recorded on the 22d day of March, 1893, in Corporation Record Book SS, in said office, page 478.

In testimony whereof, I have hereunto subscribed my official signature, and, by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the city of Nashville, this 22d day of March, A. D., 1893.

WM. S. Morgan, Secretary of State.

STATE OF TENNESSEE, Davidson County.

SEAL

I. W. E. Chadwell, Register of said county, do hereby certify that the foregoing certificate of the Secretary of State, and the *facsimile* of the great seal of the State of Tennessee, were received by me for registration on the 22d day of March, 1893, at 5 o'clock P. M., and were noted for registration in Note Book 12, page 326, and were registered in Charter Book No. 130, page 368.

WITNESS MY HAND, at office, this 22d day of March, 1893.

W. E. Chadwell, Register of Davidson County.

Nashville, Tenn., March 28, 1893.

Be it known that J. W. Thomas, Ed. Baxter, W. G. Hutcheson, M. H. Smith, and M. J. Reedy, who, as corporators named in the charter of the Louisville & Nashville Terminal Company, constitute, ex-officio, the first Board of Directors of said Company, met at the Maxwell House, in the city of Nashville, Tennessee, on March 28, 1893; whereupon on motion duly seconded, J. W. Thomas was called to the chair, and W. G. Hutcheson was appointed Secretary of the meeting.

On motion, duly seconded, it was unanimously— Resolved, That said directors accept the charter of the Louisville & Nashville Terminal Company, which was registered on the 21st day of March, 1893, in the Register's Office of Davidson County, in Charter Book No. 130, pages 363, 364, 365, 366, 367, and 368, and which was also registered on the 22d day of March, 1893, in the office of the Secretary of State of the State of Tennessee, in Corporation Book SS., page 478.

BY- LAWS

Adopted at a Meeting of the Stockholders, April 28, 1896.

I.

The fiscal and business year of the Company shall begin on the first day of July, and end on the last day of June, in each year.

II.

The general office of the Company shall be in the city of Louisville, State of Kentucky.

III.

The annual meeting of the stockholders for election of directors, reception of annual report, and for other business, shall be held at the office of the Company in Nashville, Tennessee, on Tuesday before the last Saturday in

November in each year.

Special meetings of the stockholders may be called by the President or by the Board of Directors, to be held at any time and place, either in the State of Tennessee or in any other State. Notice of such meeting shall be given by the Secretary by advertisement in a newspaper published in Louisville, Ky., not less than once a week for two weeks next preceding the date of such meeting, or by reasonable notice to each stockholder individually, and accepted by him.

Stockholders may vote at any annual or special meeting, either in person or by proxy. Each stockholder shall be entitled to one vote for each and every share of stock standing in his name, as shall be shown by a list of the stockholders showing their respective holdings, certified

by the Secretary.

A majority in value of all the stock shall constitute a quorum at any stockholders' meeting. A less number may adjourn from time to time without dissolution until a quorum be present, but any such adjournment shall not exceed thirty (30) days in all.

IV.

The capital stock of the Company shall, for the present, be one hundred thousand dollars (\$100,000), in shares of one hundred dollars each. The capital stock may be increased by resolution of the Board of Directors, subject to the approval of the holders of a majority in value of the stock at the next annual or any special meeting of the stockholders.

Stock may be transferred on the books of the Com-

pany in person, or by proper power of attorney.

V.

The number of directors shall for the present be five; but the number may be increased to not exceeding nine in number, and shall be elected by the stockholders at any annual or special meeting of the stockholders. Candidates receiving a plurality of all the votes cast shall be declared elected. They shall continue in office until their successors are elected and qualified. Vacancies in the Board shall be filled by vote of the remaining directors; and directors so elected shall continue in office until the next annual election, or until their successors are elected and qualified.

The directors shall meet at such times and places as they may be called to meet by the President, or at the call of any two directors, by notice of the time and place

of the meeting given to the other directors.

A majority of the qualified directors shall constitute

a quorum.

The directors shall elect a President, a Secretary, and a Treasurer. Such other officer or officers as may be deemed necessary for the proper conduct of the Company's business shall be appointed by the President. Said officers shall hold their respective positions until their respective successors are elected or appointed as above provided.

All instruments evidencing the mortgage, sale, transfer, or conveyance of real estate shall be executed by the President, with the seal of the Company affixed, and attested by the Secretary when authorized by the Board

of Directors.

All contracts of lease, or for the use of any of the Company's property, or for the lease by it of the property of another company or companies, individual or individuals, shall be executed in the same way.

The Company shall keep a corporate seal of the form and device annexed.

It shall be in keeping of the Secretary, to be used under the direction of the Board of Directors or of the Presi-

dent.

VII.

Additions, alterations, and amendments of these bylaws may be made by the stockholders at will.

EXHIBIT F FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. STATEMENT OF FACTS CONCERNING THE MORT GAGE OF THE L. & N. TERMINAL COMPANY.

STATEMENT AS TO MORTGAGE.

After the execution of the leases in question, all of the companies joined in the execution of a mortgage on all the property embraced in this lease, to secure an issue of bonds set out in the face of the mortgage. This mortgage was made and these bonds issued in order that there might be a means of raising money for the construction of the terminals by the issuance of securities by the two railroads and the terminal company on the property, much of which property was not covered by the underlying mortgages on the two railroads. These bonds were guaranteed by the two railroad companies, as well as being executed by the terminal company, and the railroad companies as lessees. The bonds were used to replace funds advanced by the railroad companies to the terminal company, which funds were used in the construction and equipment of the property as terminal facilities.

EXHIBIT A FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. CONTRACT BETWEEN L. & N. AND N., C. & ST. L., DATED MAY 1, 1872.

This Agreement Witnesseth:

That for the purpose of making closer connections, and of affording greater facilities for trade and travel, the Nashville and Chattanooga Railroad Company and the Louisville and Nashville Railroad Company have made the following contract, to-wit:

The Nashville and Chattanooga Railroad Company agrees to give and guarantee to the Louisville and Nashville Railroad Company the right of way upon, and perpetual use of the railroad track extending from the present depot of the Louisville and Nashville Railroad Company, at College Street, Nashville, to the depot grounds of the Nashville and Decatur Railroad Company, Nashville, for the purpose of running thereon passenger and freight trains and engines, as the same may be necessary, between said depot at College Street, and said depot of the Nashville and Decatur Railroad and between each of said depots and the Union Passenger Depot, said connecting track between the Louisville and Nashville Railroad depot, and the Nashville and Decatur Railroad Depot is to run over part of the trestle connecting, at present, the Louisville and Nashville Railroad with the Nashville and Northwestern Railroad, and over a trestle or road way to be constructed between the first named trestle and the Nashville and Chattanooga Railroad Depot as hereinafter mentioned in this contract. and then through the depot grounds of the Nashville and Chattanooga Railroad to the south end of the southern approach cut of the tunnel, and then along side of the main track of the Nashville and Chattanooga Railroad, as hereinafter mentioned, to the Nashville and Decatur Railroad Depot.

The Louisville and Nashville Railroad Com-Second: pany agrees to pay for the right of way sufficient for a connecting railroad track to be built on trestles, and to construct in a first class manner said trestles, and place thereon first class railroad iron of fish bar pattern from the trestle of the Nashville and Northwestern Railroad to the depot ground of the Nashville and Chattanooga Railroad Company; and said trestle and right of way thereafter to be the property of the Nashville and Chattanooga Railroad; and the whole of the trestle and track connecting the Louisville and Nashville Railroad Depot, with the Nashville and Chattanooga Railroad Depot, to be kept in good repair at all times, by the Nashville and Chattanooga Railroad Company for the uninterrupted use, as required by the business of the Louisville and Nashville Railroad Company and the Nashville and De-

catur Railroad Company.

Third: The Louisville and Nashville Railroad Company agrees to lay, at its own expense, the Nashville and Chattanooga Railroad Company furnishing and guaranteeing the right of way for the same, a railroad track from the south end of the southern approach cut of the

tunnel on the Nashville and Chattanooga Railroad at Nashville, and upon the present grade of said railroad to the depot grounds of the Nashville and Decatur Railroad Company for the exclusive use of the Louisville and Nashville Railroad Company and the Nashville and Decatur Railroad Company, to be kept in repair by the Louisville and Nashville Railroad Company. Nashville and Chattanooga Railroad Company covenants that such track may be used as aforesaid during the existence of said Company. But, for the present, and until the Nashville and Chattanooga Railroad Company is prepared to offer such right of way, it is understood that the free use of the present track of the Nashville and Chattanooga Railroad, between the south end of the tunnel and the depot of the Nashville and Decatur Railroad. is to be given instead of a separate track, for the passage of trains belonging to the Nashville and Decatur, and the Louisville and Nashville Railroad Companies, the running of which, however, is to be subject to the orders of the superintendent of the Nashville and Chattanooga Railroad, but without delay to the business of said Rail-

road Companies.

Fourth: The Louisville and Nashville Railroad Company agrees to pay towards the erection of a suitable Union Passenger Depot building on the present depot grounds of the Nashville and Chattanooga Railroad Company, Fifty Thousand Dollars (\$50,000), whenever the Nashville and Chattanooga Railroad Company shall contribute the same amount for said purpose, and proceed to erect said depot, the sum of Fifty Thousand Dollars (\$50,000) to be paid by each party as the same may be necessary, to be used in payment for the building of said depot. And the Louisville and Nashville Railroad Company, and the Nashville and Decatur Railroad Company are to have the free and perpetual and necessary accommodations for their passenger business in and about said depot, without let or hinderance from the Nashville and Chattanooga Railroad Company or other parties to whom the said Nashville and Chattanooga Railroad Company may give the right to use said depot, and the said Louisville and Nashville Railroad shall have the right to select the track in and about said depot for the use of its passenger trains in preference to any other Company except the Nashville and Chattanooga Railroad Company using the depot. And the Nashville and Chattanooga Railroad Company is to keep the Depot building, tracks, necessary fixtures and furniture used for the accommodation

of the passenger business in good repair. The expenses of lighting said building are to be borne equitably by the

parties to this contract.

Fifth: It is agreed by the parties hereto that the Nashville and Chattanooga Railroad Company may permit other railroad companies to use the connecting trested and tracks between the Louisville and Nashville Railroad depot, and the depot of the Nashville and Chattanooga Railroad Company and also the Union Passenger Depot, upon terms to be agreed upon between such other companies and the Nashville and Chattanooga Railroad Company, provided that such permit to use, or the use thereof shall not hinder, delay or interfere with the free and prompt transaction of the business of the Louisville and Nashville Railroad Company over said trestle or connecting track, and the Union Passenger Depot.

Sixth: In consideration of the above stipulations, and upon compliance with the same by the Nashville and Chattanooga Railroad Company, the Louisville and Nashville Railroad Company agrees to pay to the Nashville and Chattanooga Railroad Company, Eighteen Thousand Dollars (\$18,000) per annum, in monthly payments of Fifteen Hundred Dollars (\$1,500) from and after the commencement of the use of said connecting track between the depot of the Louisville and Nashville Railroad Company and the depot of the Nashville and Decatur

Railroad Company.

Seventh: In the event of any controversy or dispute by the parties as to their rights under it, or as to the performance of the stipulations of this contract, the same is to be settled by arbitration, and the decision of three disinterested railroad experts, one to be selected by each

party, and the other by the two first selected.

Eighth: It is understood that the Nashville and Chattanooga Railroad Company is the legal owner of the Nashville and Northwestern Railroad, by purchase. But it is further understood that the Nashville and Chattanooga Railroad Company may (if they elect so to do) furnish the right of way to the Louisville and Nashville Railroad Company to make the above connections independent of any part of the Nashville and Northwestern Railroad.

In Witness Whereof, the President of the Nashville and Chattanooga Railroad Company on the part of that Company, and the President of the Louisville and Nashville Railroad Company, on the part of the latter Company, have set their hands, and the seals of said Companies, this first day of May, 1872.

Signed in duplicate.

Witness, etc.

Nashville & Chattanooga R. R. Co.,
By E. W. Cole, Pres't.

Louisville & Nashville Railroad Co., By H. D. Newcomb, *Pres't*. W. Ranney, *Sec*.

State of Tennessee City of Nashville Sct.

I, H. L. Claiborne, Commissioner of Deeds for the State of Kentucky, duly appointed and commissioned by the Governor thereof, for the State of Tennessee, and authorized to take the acknowledgment of deeds and other writings, do certify that this agreement between the Nashville & Chattanooga Railroad Company and the Louisville & Nashville Railroad Company, was this day produced to me in my office in the city aforesaid by E. W. Cole, President of the Nashville & Chattanooga Railroad Company, and by him then and there acknowledged before me to be his act and deed for the purposes therein mentioned.

Given under my hand and seal of office this second day of May, 1872.

H. L. CLAIBORNE,

Commissioner.

State of Kentucky, Jefferson County.

I, N. R. Wilson, Commissioner of deeds for the State of Kentucky resident in the city of Louisville in the county and State aforesaid, duly appointed and commissioned by the Governor of the State of Tennessee to take the acknowledgment of deed, etc., to be used or recorded therein, do certify that this agreement between the Nashville and Chattanooga Railroad Company and the Louisville & Nashville Railroad Company was this day produced to me in my office in the city aforesaid by H. D. Newcomb, President of the Louisville & Nashville Railroad Company and by him then acknowledged before me to be his act and deed for the purposes therein mentioned.

Given under my hand and seal of office this fourth day of May, 1872.

N. R. Wilson,

Commissioner for Tennessee in Louisville, Kentucky. LETTER DATED NOVEMBER 5, 1914, FROM CHARLES BARHAM TO R. WALTON MOORE, SHOWING RESULT OF JOINT CHECK OF STATEMENT OF INDUSTRIES ON TENNESSEE CENTRAL AND NASHVILLE TERMINAL TRACKS, AND REVISED LIST OF INDUSTRIES, AS PREPARED BY MR. BARHAM, FILED WITH MR. MOORE'S LETTER TO COMMISSIONER MEYER, DATED NOVEMBER 9, 1914.

Nashville, Tenn., Nov. 5, 1914. 52294-V 5638-V

Traffic Bureau of Nashville v. L. & N. R. R. Co., et al. (I. C. C. Docket 6468.)

Mr. R. Walton Moore Special Counsel Washington, D. C.

Dear Sir:

At the hearing of this case at Nashville, it was agreed that a joint check of the industries located on the Tennessee Central R. R. and the Nashville Terminal tracks (L. & N.-N. C. & St. L.) would be made—at least, that is my recollection. The check along this line has been made. I find that our copy of the transcript was returned to your office by Mr. DeBow, who has promised to secure the loan of it for my perusal that I may correctly follow what was promised at the hearing. Learning today that Mr. Meyer is giving consideration to this case, I am not awaiting the return of the transcript, but am enclosing you herewith a revised list of the industries on the Nashville Terminals (L. & N.-N. C. & St. L.) which please file with the examiner. The Tenn. Central has furnished me with their list as result of said check, copy of which I enclose, and I desire to call your attention to the fact that on list No. two (2) they have included the following:

B. J. Fox

American Paper Box Mfg. Co. George Peard Belting Co. Southern Stamping & Mfg. Co. Nashville Builders' Supply Co. Deihl & Lord

Union Tobacco Company as located on their rails. To this we do not agree for the reason that these people are located on the east side of Front Street and cars can not be placed at their doors and freight can not be unloaded directly from or to cars. The cars serving Front Street industries are operated on a track laid on a public street (now known as First Avenue). The cars serving the industries on the west side of that street can be placed close to the curb so that freight can be handled into or out of the cars readily. This is not the case with the industries located on the east side, the distance from the car to the curb being at least 25 feet with a 10-foot sidewalk, and the freight must be handled by hand, truck or wagon this distance. Our contention is that these industries do not come under the definition in the case of the Iowa State Manufacturers Association v. Chicago & Northwestern R'y which in part reads as follows:

"The term joint industrial track, as used in this opinion, is intended to refer to the transportation of freight from one industry, or other established business, located upon a public or private side track of a railroad, or on the tracks belonging to an industry, in such a manner that freight can be emptied or unloaded from a car directly into said industry or place of business, or loaded from said industry or place of business directly into a car which is situated upon the tracks of said railroad."

Neither do we agree to the insertion of Walter Stokes as we do not consider this an industry. As you know, Mr. Walter Stokes if a prominent law and not in any commercial line. The Tenn. Central contends under its contract for a right of way through his property, they were to furnish him with a switch.

On receipt of the transcript in this case, if I find that other action is necessary on our part to properly place our list of industries before the Examiner, will take pleas-

ure in so doing.

Yours truly, General Freight Agent.

EXHIBIT B FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. CONTRACT BETWEEN MAYOR AND CITY COUNCIL OF NASHVILLE AND L. & N. TERMINAL COMPANY, DATED JUNE 21, 1898.

Contract Between the Mayor and City Council of Nashville and the Louisville and Nashville Terminal Company.

This contract, entered into by and between the Mayor and City Council of Nashville (hereinafter referred to as the city) and the Louisville & Nashville Terminal Company (hereinafter referred to as the Terminal Company), pursuant to an ordinance of said Mayor and City Council authorizing it, and which ordinance is made part hereof, witnesseth:

Item 1. The Terminal Company agrees to construct a passenger station building, baggage and express building, shed, platforms, tracks, etc., as shown on the plan hereto attached, and marked Exhibit "A," and made a part hereof.

Item 2. The Terminal Company agrees to construct two, and may, as its option, construct more, of the freight

stations, as shown in said plan, Exhibit "A."

Item 3. The Terminal Company agrees to construct a bridge over the existing railroad tracks, and the proposed tracks of the Terminal Company on Broad Street, from the west line of Walnut Street to the east line of the new location of Kayne Avenue, as designated on plan, Exhibit "A," so that the street travel and traffic, including electric cars, can be carried over said tracks, in accordance with the plan and specifications of such bridge hereto attached as Exhibit "B," and made a part hereof, said construction of said bridge to be so carried on as to permit one-half of Broad Street to be open and free for travel at all times. The wearing street surface of said bridge shall be of vitrified brick, and sidewalk of repressed brick; and both shall be laid according to the specifications filed herewith as Exhibit "E."

Item 4. The Terminal Company agrees to construct a bridge over the existing railroad tracks and the proposed tracks of the Terminal Company on Church Street, from the west line of Walnut Street to the east line of McCreary Street, so that the street travel and traffic, including electric cars, can be carried over said tracks in accordance with the plan of said bridge hereto attached as Exhibit "C," and made a part hereof, the said work to be so done that travel shall not be impeded on said street for more than three months. The wearing street surface of said bridge shall be of vitrified brick, and sidewalk of repressed brick, and both shall be laid according to the specifications filed herewith as Exhibit "E."

Item 5. The Terminal Company agrees to construct additional overhead bridges, and change the location of existing overhead bridges, for the purpose of carrying railroad tracks over Cedar, Pearl, Belleville, and Gay streets, in accordance with the said plan, Exhibit "A."

Item 6. The Terminal Company agrees to pay the cost of acquiring the property and of constructing a street fifty feet wide which is hereinafter designated as New Kayne Avenue; said New Kayne Avenue will extend southwardly from, and at right angles to, Broad Street to the present Kayne Avenue, and intersect the latter at or near the dividing line between it and lot 329 in

McNairy's addition, as shown on said plan, Exhibit "A," and will occupy lots 16, 88, 89, 153, 154, 255, 296, and a part of lot 329; said lots, as numbered, are shown on plates 10 and 8 of G. M. Hopkins' atlas of the city of Nashville; and the Terminal Company agrees to pay the cost of connecting New Kayne Avenue with Broad Street, according to plain Exhibit "D."

Item 7. The Terminal Company agrees to pay the cost of moving the tracks, wires, and poles of the Nashville & Suburban Railway Company, rendered necessary

by the change in the location of Kayne Avenue.

Item 8. The Terminal Company agrees to pay the cost of changing the location of water and gas pipes now under Broad Street, and that the Board of Public Works and Affairs of the city shall decide whether such pipes shall pass under the tracks or over the viaducts to be constructed by said Terminal Company. Said water and gas pipes and sewers, if any, shall be thereafter subject to inspection and repair by the city authorities, whether they may go over said viaduct or under the tracks of the Terminal Company.

Item 9. The Terminal Company agrees to pay the cost of acquiring the property, and of constructing a street fifty feet wide as an extension of Walnut Street, from the north line of Cedar Street to the south line of

Pearl Street.

Item 10. The Terminal Company agrees to pay the cost of altering Walnut Street, by changing its location so that it will be forty feet east of its present location, from the first alley south of Church Street to about two hundred and ten feet north of Broad Street, and so that it will not be less than its present width at any point.

Item 11. The Terminal Company agrees to construct an overhead bridge over Walnut Street, immediately south of the intersection of Walnut and Cedar streets,

in accordance with said plan, Exhibit "A."

Item 12. The Terminal Company contracts that the work provided in this ordinance to be done, shall be begun within thirty days after this ordinance becomes a law, and the passenger station, bridges, streets, and viaducts shall be finished by January 1, 1901, and the whole specified work herein provided shall be completed by January 1, 1902.

Item 13. The Terminal Company agrees that the city may, at its option, construct a bridge over the existing Company, as an extension of Demonbreun Street, such bridge to have a clearance of not less than twenty-two railroad tracks, and the proposed tracks of the Terminal feet above railroad rails; Provided, That its pillars, posts, piers or supports shall obstruct or interfere as little as practicable with the tracks of the Terminal Company; and the new train shed shall be so constructed as not to interfere with the building of this proposed bridge.

Item 14. All extensions of streets and new streets shall be constructed to such grade as the city may adopt, and in the same manner and of the same material as the streets changed now are, and at the expense of the Ter-

minal Company.

Item 15. The Terminal Company agrees that the city may hereafter, as necessity or the public interest may require, enter upon the property of the Terminal Company for the construction or change or repair of any sewerage or water pipes or facilities for lighting; Provided, The use and operation of the said property of the Terminal Company shall be thereby as little obstructed or interfered with as practicable.

Upon the execution of this contract the city agrees: Item A, to exercise its power of condemning land, so as to alter Walnut Street from the first alley south of Church Street to about two hundred and ten feet north of Broad Street, by changing its location so that it will be forty feet east of its present location between the points last named. But the widening and altering of said street shall be done at the expense of the said Tor.

said street shall be done at the expense of the said Terminal Company, as hereinbefore provided in Item 10.

Item B. To exercise its power of condemning land for opening an extension of Walnut Street from the north line of Cedar Street to the south line of Pearl Street, as hereinbefore described in Item 9, but at the expense of the said Terminal Company; and to abolish and close Belleville Street from the north line of Cedar Street to the south line of Pearl Street. The title to that portion of Belleville Street so abolished or closed shall vest in the Terminal Company, when the obligations entered into by the Terminal Company have been complied with; Provided, That if any owner of property abutting on Belleville Street, between the north line of Cedar Street and the south line of Pearl Street, shall object to abolishing or closing said street, upon which his property abuts, no part of said street, between Cedar and Pearl streets, shall be abolished or closed unless the Terminal Company shall obtain his consent, or acquire his said property by purchase, lease, or otherwise.

Item C. To exercise its power of condemning land for opening New Kayne Avenue, as hereinbefore described in Item 6, at the expense of said Terminal Company, and to abolish or close the present Kayne Avenue from the southeast corner of lot 296 in McNairy's addition to its intersection with Broad Street, and the title to the portion so abolished or closed shall vest in the said Terminal Company when the obligations entered into by the Terminal Company have been complied with

as provided in this instrument, but not before.

Item D. The city hereby grants to said Terminal Company the right to construct additional overhead bridges, and to make changes in the location of existing overhead bridges for the purpose of carrying railroad tracks over Cedar, Pearl, Belleville, and Gay streets, in accordance with said plan, Exhibit "A"; but such change in location of existing bridges and constructing of new bridges shall be at the expense of said Terminal Company, as hereinbefore provided in Item 5.

Item E. The city hereby authorizes the change of water pipes, and agrees to secure the right to change the gas pipes in Broad Street so that the same shall pass over the viaduct or lie below the tracks of said Terminal Company, as the Board of Public Works and Affairs may decide, and to procure the right to remove the tracks, wires, and poles of the Nashville & Suburban Railway Company from the present Kayne Avenue to New Kayne

Avenue.

Item F. The city agrees to arrange with the Nashville Street Railroad to remove its tracks, wires, and poles from Walnut Street, between Church and Cedar streets, without expense to the Terminal Company.

Item G. The city hereby grants to the said Terminal Company the right to construct an overhead bridge over Walnut Street immediately south of the intersection of Walnut and Cedar streets, in accordance with said plan, Exhibit "A"; but the construction of said bridge shall

be at the expense of said Terminal Company.

Item H. The city agrees to abolish or close all parts of streets and alleys within the following boundaries, viz.: Commencing at a point where the east property line of the Nashville, Chattanooga & St. Louis Railway intersects South Spruce Street, and following such line to Cedar Street; thence along the south line of Cedar Street to the east line of McCreary Street; thence along the east line of McCreary Street, as it now exists, and in a line projected therefrom, as per Exhibit "A," to Broad Street; thence along the east line of the proposed New Kayne Avenue to the point of intersection with a straight line projected from the northern margin of

Gleaves Street; thence along this straight line and the north margin of Gleaves Street to South Spruce Street -all as shown on said plain, Exhibit "A"; and the title to the portions of streets so closed, altered or abolished. including that portion of Walnut Street abandoned for the change in said street as provided in Items 10 and A hereof, shall best in the Terminal Company upon the completion by it of the work herein undertaken by it, if the same is done in conformity to, and compliance with, this contract; Provided, That if the owner of any property situated within the above described boundaries, and which abuts within said boundaries upon any of said streets or alleys, shall object to abolishing the said street or alley upon which his said property abuts, no street or alley on the block upon which the said property abuts shall be abolished or closed unless the Terminal Company shall obtain the consent of said owner, or acquire said property by purchase, lease, or otherwise.

Item I. The city agrees, at its own expense, to widen, establish, and grade, by embankment or bridge approaches or otherwise, or to erect or establish bridge approaches or embankments to the viaducts to be built at the expense of the Terminal Company on Broad and Church streets, so that travel and traffic on said streets, including electric cars, may be conducted and carried on with ease and convenience to the public, upon and over the bridges to be constructed by said Terminal Company, upon said Broad and Church streets, as provided for

hereinbefore in Items 3 and 4.

Item J. The city reserves the right, at its option, to construct a bridge over the existing tracks, and proposed tracks, as an extension of Demonbreum Street, according to plans and specifications as described in Item 13.

THE LOUISVILLE & NASHVILLE TERMINAL CO.

By (Sgd.) E. C. Lewis, President.

Attest:

(Sgd.) J. H. Ellis, Secretary.

In view of the benefits which shall be derived by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, by the enjoyment of the improvements herein contracted to be made by the Louisville & Nashville Terminal Company, the said Louisville & Nashville Railroad Company, and Nashville, Chattanooga & St. Louis Railway, guarantee the performance

by the Louisville & Nashville Terminal Company, of all the obligations undertaken by it in the above contract. The Louisville & Nashville R. R. Co., By (Sgd) M. H. Smith,

President.

Attest:

(Sgd) J. H. Ellis, Secretary.

> THE NASHVILLE, CHATTANOOGA & St. Louis R'Y, By (Sgd) J. W. Thomas, President.

Attest:

(Sgd) J. H. Ambrose, Secretary.

> THE MAYOR AND CITY COUNCIL OF NASHVILLE, By (Sgd) FERDINAND E. KUHN, City Recorder.

Executed in duplicate this 21st day of June, 1898.

Extract from minutes of meeting of the Board of Directors of the Louisville & Nashville Railroad Company, held at the Company office in New York City, on Thurs-

day, June 16, 1898, at 1:30 p. m.

The Chairman presented to the meeting a letter dated June 8, 1898, from Mr. M. H. Smith, President, with reference to this Company joining with the Nashville, Chattanooga & St. Louis Railway in an undertaking guaranteeing the performance on the part of the Louisville & Nashville Terminal Co. of the stipulations of the contract between the Terminal Company and the City of Nashville referred to in said letter, whereby the Terminal Company undertakes to construct terminal facilities in said city: and submitted the following resolution:

Whereas the Louisville & Nashville Terminal Company is about to construct in the City of Nashville, Tennessee, adequate terminal facilities, which upon completion will be leased jointly by the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway, and will be used and enjoyed by this Company and the Nashville, Chattanooga & St. Louis Railway, and it is to the interest of this Company that construction of said facilities be begun and carried speedily to completion in accordance with the terms of said contract between the said Terminal Company and the said City of Nashville, therefore.

Resolved: That the President of this Company be and he is hereby authorized and empowered to sign the name of this Company and to cause its corporate seal to be affixed, attested by the Secretary, to an undertaking to be made jointly by this Company and the Nashville, Chattanooga & St. Louis Railway, guaranteeing the performance by the Louisville & Nashville Terminal Company of all the obligations undertaken by it in the above named contract.

Adopted.
A true copy from the minutes.
(Sgd) J. H. Ellis,
Secretary.

At a called meeting of the Board of Directors of the Nashville, Chattanooga & St. Louis Railway held in the office of the Company, at Nashville, Tennessee, on Monday, June 13, 1898, a quorum being present, W. A. Goodwyn offered the following preamble and resolution, which was seconded by J. E. Washington, and unanimously

adopted:

"Whereas, the Louisville & Nashville Terminal Company is about to construct in the City of Nashville, Tenn., adequate terminal facilities, which upon completion will be leased jointly by the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway, and will be used and enjoyed by this Company and the Louisville & Nashville Railroad Co., and it is to the interest of this Company that construction of said facilities be begun and carried speedily to completion in accordance with the terms of a contract made by and between the said Terminal Company and the City of Nashville; therefore

Resolved, that the President of this Company be, and he is hereby authorized and empowered to sign the name of said Company and to cause its corporate seal to be affixed, attested by the Secretary, to an undertaking to be made jointly by this Company and the Louisville & Nashville Railroad Company, guaranteeing the performance by the Louisville and Nashville Terminal Company of all the obligations undertaken by it in the above

named contract."

A true copy

Aitest:

(Sgd) J. H. Ambrose, Secretary.

Nashville, Tennessee, June 16, 1898.

STATEMENT OF J. H. ELLIS, SECRETARY OF L. & N. R. R. COM-PANY, DATED NOVEMBER 2, 1914, CONCERNING L. & N. RAIL-BOAD COMPANY'S STOCK OWNERSHIP IN N., C. & ST. L., FILED WITH MR. JOUETT'S LETTER TO COMMISSIONER MEYER, DATED NOVEMBER 2, 1914.

Louisville, Ky., Nov. 2, 1914.

Mr. E. S. Jouett, General Attorney.

Dear Sir:

Complying with your request for information as to the Louisville & Nashville Railroad Company's acquisition of stock in the Nashville, Chattanooga & St. Louis Railway, will say that I find upon examination of our records that the Louisville & Nashville Railroad Company began acquiring stock in this company on January 20, 1880, and by October 31, 1881, had purchased a majority of the stock.

Its holdings have been increased from time to time since that date, until now its owns 71.776 per cent of the outstanding stock of the Nashville, Chattanooga & St. Louis Railway. I attach a statement showing the acqui-

sition and present holdings.

At your request I am writing this letter in triplicate, with the understanding that one copy is to be forwarded to the Interstate Commerce Commission, as my statement in the Nashville switching case, and the other copy is to be sent to Mr. T. M. Henderson, Commissioner of the Traffic Bureau of Nashville.

Yours very truly,

J. H. Ellis, Secretary.

COPY OF LETTER FROM E. S. JOUETT TO T. M. HENDERSON, DATED NOVEMBER 2, 1914, WHICH WAS ENCLOSED WITH ABOVE-MENTIONED LETTER TO COMMISSIONER MEYER, DATED NOVEMBER 2, 1914.

Louisville, Ky., November 2, 1914.

City of Nashville, et al., v. L. & N. R. R. Co. I. C. C. Docket No. 6484.

Mr. T. M. Henderson, Commissioner, Traffic Bureau, Nashville, Tenn.

Dear Sir:

Replying to your favor of October 28th, relative to the handling of competitive traffic at Nashville on the basis of the first block of local rates, will say that I referred your letter to Mr. A. R. Smith, Third Vice-President, who has control of the traffic affairs of this company, and I am today in receipt of the following letter from him .

"Returning Mr. T. M. Henderson's letter of October 28th, regarding Nashville switching, which is

addressed to you.

The L. & N. R. R. has no physical connection at Nashville over which freight can be interchanged. The L. & N. joint interests with the N. C. & St. L. R'y have a point of interchange at Shop Junction (also known as Baxter Heights). There is a point of physical contract a mile or two south of the Nashville switching limits, called Vine Hill.

We will receive from the Tennessee Central R. R., either at Vine Hill or at Shops Junction, competitive freight consigned to industries on the Joint Terminals at Nashville, on basis of the first block (10 miles or less) of local rates—that is, the scale mentioned

by Mr. Henderson of 12, 10, 9, etc.
I do not understand Mr. Henderson's reference to any difficulty at Nashville, but will take up this feature."

Mr. Smith said that he would at once communicate with the officials of the Company at Nashville in regard to the matter, so I assume that there will be no further difficulty.

Yours very truly,

Attorney General.

Copy to Hon. B. H. Meyer, Interstate Commerce Commission. Washington, D. C.

STATEMENT OF MILEAGE OF L. & N. AND N., C. & ST. L. AT NASHVILLE, ENCLOSED WITH MR. JOUETT'S LETTER TO COMMISSIONER MEYER, DATED NOVEMBER 9, 1914.

City of Nashville, et al., v. L. & N. R. R. Co., Docket No. 6484.

Exhibit with Trabue's testimony.

Statement of mileage of L. & N. and N. C. & St. L. at Nashville.

L. & N.:

Main track				٠						. 8.10	miles
Side tracks										.23.80	miles

N. C. & St. L.:

Main track										.12.58	miles
Side tracks								٠		.26.37	miles

STATEMENT OF ACQUISITION AND PRESENT HOLDINGS OF L. & N. RAILROAD COMPANY IN N., C. & ST. L. RAILWAY, ENCLOSED WITH MR. JOUETT'S LETTER TO COMMISSIONER MEYER, DATED NOVEMBER 9, 1914.

Louisville, Ky., November 10, 1914.

Mr. E. S. Jouett

General Attorney.

Dear Sir:

Complying with your request for information as to the Louisville & Nashville Railroad Company's acquisition of stock in the Nashville, Chattanooga & St. Louis Railway, will say that I find upon examination of our records that the Louisville & Nashville Railroad Company began acquiring stock in this Company on January 20, 1880, and by October 31, 1881, had purchased a majority of the stock.

Its holdings have been increased from time to time since that date, until now it owns 71.776 per cent of the outstanding stock of the Nashville, Chattanooga & St. Louis Railway. I attach a statement showing the ac-

quisition and present holdings.

At your request I am writing this letter in triplicate, with the understanding that one copy is to be forwarded to the Interstate Commerce Commission, as my statement in the Nashville switching case, and the other copy is to be sent to Mr. T. M. Henderson, Commissioner of the Traffic Bureau of Nashville. Yours truly,

J. H. Ellis, Secretary. STATEMENT OF ACQUISITION AND PRESENT HOLDINGS BY THE LOUISVILLE & NASH-VILLE RAILROAD COMPANY IN THE NASH-VILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

D. ()	Number	
Date Acquired	of	Par
	Shares	Value
Jany. 20, 1880	134,000	\$25.00
Mch. 23, 1880	160	25.00
Mch. 26, 1881	400	25.00
Mch. 28, 1881	800	25.00
Apl. 15, 1881	1.200	25.00
Dec. 23, 1881	40	25.00
Stock sold	l Oct. 136,600	25.00
31, 1881	1,200	25.00
	107.100	
	135,400	25.00

Sometime between June 30, 1889, and September 25, 1890, the 135,400 shares of stock, at \$25.00 per share, were converted into 33,850 shares of stock, at \$100.00 per share.

~		,	
Sep.	25, 1890, on hand	33,850	\$100.00
Sep.	14, 1891	16,925	100.00
Jun.	16, 1893	3,840	100 00
Oct.	7, 1893	4001/8	100.00
Jul.	12 to Oct. 26, 1900	1,210	100.00
Jul.	3, 1900	4,000	100.00
Jul.	3, 1900	100	100.00
Jul.	16, 1900	1/4	100.00
Dec.	20, 1900	1/2	100.00
Jan.	7, 1901	1/8	100.00
Jan.	13, 1902	11.250	100.00
Apr.		200	100.00
Aug.	, 1913		100.00
	,	10,000	100.00
	Total1	114,841	

Note: The 43,065 shares acquired in August, 1913, was subscribed by the L. & N. R. R. Co., as its proportion in the increase of the capital stock of the Nashville, Chattanooga & St. Louis Railway from \$10,000,000.00 to \$16,000.000.00.

At a General Session of the INTERSTATE COM-MERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of July A. D. 1914.

JAMES S. HARLAN	
EDGAR E. CLARK	Commissioners.
HENRY C. HALL	

No. 6484.

CITY OF NASHVILLE, ET AL.,

versus

LOUISVILLE & NASHVILLE RAIROAD COM-PANY, ET AL.

ORDER PERMITTING INTERVENTION.

Upon consideration of the record in the above entitled proceeding and petition for leave to intervene filed in behalf of the Business Men's Association of Nashville.

IT IS ORDERED, That the said Business Men's Association of Nashville be, and it is hereby, permitted to intervene for the purpose of filing brief on or before August 1, 1914, and being heard in oral argument, if oral argument is heard.

IT IS FURTHER ORDERED, That a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. UNNUMBERED EXHIBIT FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. LEASE DATED JUNE 15, 1896, L. & N. TERMINAL COMPANY TO L. & N. RAILROAD COMPANY AND N., C. & ST. L. RAILWAY.

THIS INDENTURE, made this fifteenth day of June, 1896, by and between the LOUISVILLE & NASH-VILLE TERMINAL COMPANY, a corporation chartered, organized, and existing under the laws of the State of Tennessee, and known hereinafter as the first party, and the LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation chartered, organized, and existing under the laws of the Commonwealth of Kentucky, with a right of way granted by the State of Tennessee to construct and operate a railroad in said State of Tennessee, and the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, a corporation chartered, organized, and existing under the laws of the State of Tennessee, said two last named railroad or railway companies being known hereinafter as the second parties, WIT-NESSETH:

ARTICLE I.

That said first party hath letten, and by these presents doth grant, demise, and to farm let, unto said second parties and their respective successors and assigns, the following pieces or parcels of land situated in the City of Nashville, County of Davidson, and State of Tennessee, and bounded as described as follows, viz.:

I.

1. All of lots numbers four (4) and five (5) in the Gleaves plan of lots, as recorded in Book 21, page 29, Register's Office of Davidson County, said lots fronting ninety feet on the north side of Gleaves Street, and extending northwardly, between parallel lines, one hundred and forty-nine (149) feet more or less to an alley, they being the same conveyed to E. C. Lewis, agent, by M. L. Hoyte, by deed dated November 26, 1890, and recorded in Book 164, page 192, Register's Office of Davidson County.

2. All of lots numbers 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 in said Gleaves plan of lots, said lots fronting each 25 feet on the north side of Gleaves Street, and running back at right angles to said street, and between parallel lines 145 feet to an alley, said lots being the same conveyed to E. C. Lewis by Minnie Gleaves by deed dated May 16, 1888, and regis-

tered in Book 113, page 72, Register's Office of Davidson

County.

All of lot No. 16 and the north ten feet of lot No. 3. 17, in Lunatic Asylum plan of lots, as registered in Book No. 21, page 117, Register's Office of Davidson County, said lot No. 16 and part of lot No. 17 fronting 60 feet on the east side of Magazine Street, and running back eastwardly between parallel lines with the south line of Griffin Street 1501/2 feet to a 20-foot alley; the north 30 feet of said lot No. 16 being the same conveyed to E. C. Lewis by Wm. Graves and wife, and W. W. Tucker and wife, by deed dated September 18, 1890, registered in Book 158, page 316, Register's Office of Davidson County; and the south 20 feet of lot No. 16 and the north 10 feet of lot No. 17 being the same conveyed to said Lewis by Mary M. Tucker and husband, by deed dated February 15, 1896, and registered in Book 208, page 153, Register's Office of Davidson County.

All of lots numbers 20, 21, and 24, in said Lunatic Asylum plan, said lots being the same sold by the State of Tennessee, and bought by E. C. Lewis of Murray and Reagan, through their trustee, S. N. Henderson, of J. W. Bass and of George K. Whitworth, C. and M., in the order and number of lots named; said lots fronting each 50 feet on the east side of Magazine Street, and running back between parallel lines 150 feet more or less to Over-

ton Street.

5. All of lot No. 22, in said Lunatic Asylum plan, said lot fronting 50 feet on the west side of Magazine Street, and extending westwardly between parallel lines 1501/4 feet to a 10-foot alley, it being the same conveyed to E. C. Lewis by J. S. Cobb and wife by deed dated September 25, 1891, registered in Book 157, page 583,

Register's Office of Davidson County.

6. All of lot No. 12 in said Lunatic Asylum plan, said lot fronting 50 feet on the east side of Kayne Avenue, and running back between parallel lines 150 feet to a 10-foot alley, it being the same conveyed to said E. C. Lewis by John S. Arbuthnot and wife by deed dated April 5, 1888, registered in Book 158, page 477, Regis-

ter's Office of Davidson County.

7. All of lot No. 253 in McNairy's Addition to the city of Nashville, as per plan recorded in Book 9, page 323, Register's Office of Davidson County, said lot fronting 50 feet on the north side of Laurel Street, and extending northwardly between parallel lines 170 feet to an alley, it being the same conveyed to said E. C. Lewis by J. W. Barnes by deed dated April 3, 1889, registered in Book 162, page 17, Register's Office of Davidson

County.

8. All of lot No. 255 and 5 feet off the west side of lot No. 254 in said McNairy's Addition to the city of Nashville, said parcel of land fronting 55 feet on the north side of Laurel Street, and extending northwardly between parallel lines 170 feet to an alley, it being the same conveyed to said E. C. Lewis by Mary Stevenson and husband by deed dated August 12, 1890, registered in Book 158, page 205, Register's Office of Davidson

County.

9. All of lots numbers 146, 148, and 152 in said McNairy's Addition, each fronting 50 feet on the south side of Demonbreun Street, and extending southwardly between parallel lines 175 feet to an alley; lot 146 being the same conveyed to said E. C. Lewis by J. W. Simmons by deed dated January 20, 1890, registered in Book 159, page 225, Register's Office of Davidson County; lot No. 148 being the same conveyed to said E. C. Lewis by John Kirkman, trustee of Catherine H. Pritchett, by deed dated June 1, 1888, registered in Book 208, page 425, Register's Office of Davidson County; lot No. 152 being the same conveyed to said E. C. Lewis by John W. Simmons by deed registered in Book 159, page 530, Registerial County (1997).

ter's Office of Davidson County.

10. All of lots numbers 149, 151, and 153 of said McNairy's Addition to the city of Nashville, each fronting 50 feet on the north side of Demonbreun Street and extending northwardly between parallel lines 166 feet to an alley; lot No. 149 being the same conveyed to said Lewis by Mrs. Ann Forde, Robert A. Forde, Helen Forde, Stille F. Forde, M. Forde, and H. W. Forde, by deed dated February 9, 1888, registered in Book 158, page 260, Register's Office of Davidson County; lot No. 151 being the same conveyed to said Lewis by J. J. Freeman and wife by deed dated February 23, 1888, registered in Book 159, page 108, Register's Office of Davidson County; lot No. 153 being the same conveyed to said Lewis by S. A. Cunningham by deed dated April 2, 1888, registered in Book 117, page 258, Register's Office of Davidson County.

11. All of lots numbers 82 and 84 in said McNairy's Addition to the city of Nashville, each of said lots fronting 50 feet on the north side of McGavock Street, and extending northwardly between parallel lines 169 feet to an alley; lot No. 82 being the same conveyed to said Lewis by William P. Watson by deed dated March 27, 1888, registered in Book 159, page 108, Register's Office

of Davidson County; lot No. 84 being the same conveyed to said Lewis by J. T. Rundle and wife by deed dated February 29, 1888, registered in Book 159, page 12, Register's Office of Davidson County.

All of lots numbers 7, 8, 10, and 12 of said McNairy's Addition to the city of Nashville, each fronting 50 feet on the south side of Broad Street and extending southwardly between parallel lines 169 feet to an allev: lot No. 7 being the same conveyed to said Lewis by Peter McMeekin and wife by deed dated December 31, 1892, registered in Book 208, page 427, Register's Office of Davidson County; lot No. 8 being the same conveyed to said Lewis by Valentine Steinhauer and wife by deed dated April 6, 1889, registered in Book 159, page 203, Register's Office of Davidson County; lot No. 10 being the same conveyed to said Lewis by Rebecca G. Lindsay and husband by deed dated March 28, 1889, registered in Book 158, page 533, Register's Office of Davidson County; and lot No. 12 being the same conveyed to said Lewis by A. W. Harris, trustee of Catherine H. Pritchett and husband, by deed dated September 16, 1891, and registered in Book 203, page 423, Register's Office of Davidson County.

All of lots numbers 208 and 209 of said McNairy's Addition to the city of Nashville, each fronting 50 feet on the south side of Porter Street and extending southwardly between parallel lines 175 feet to an alley, they being the same conveyed to said Lewis by S. A. Cunningham, John A. Payne, and L. D. Palmer, by deed dated September 10, 1890, registered in Book 156, page

581, Register's Office of Davidson County.

14. A lot or parcel of land, being a part of lot No. 124 in Hynes' Addition to the city of Nashville, a plan of which is recorded in the office of the Clerk and Master of the Chancery Court at Nashville, Tenn., Minute Book "B," page 85, to which special reference is hereby made, said lot or parcel of land fronting 391/5 feet on the east line of McCreary Street, measured northwardly from the north line of Grundy Street, the width of said parcel of land, in the rear, being 351/2 feet, measured northwardly from said north line of Grundy Street, the depth of said lot or parcel of land, measured through the center thereof, being 145 feet; it being the same conveyed to E. C. Lewis by C. C. Christopher, by deed dated June 25, 1892, registered in Book No. 185, page 92, Register's Office of Davidson County.

All of lots numbers 122 and 123, in said Hynes' Addition to the city of Nashville, said lots fronting each 79 feet on the east side of McCreary Street, beginning on the east side of said street, 140 feet from the south line of Church Street; thence extending southwardly, along the east side of McCreary Street, 158 feet more or less; thence eastwardly 145 feet to the rear line of said lots; thence northwardly 152 feet to the southeast corner of lot No. 120; thence westwardly along the south line of lots 120 and 121, 145 feet to the point of beginning, being the same lots conveyed to E. C. Lewis by S. M. Douglas and wife, by deed dated January 20, 1891, registered in Book No. 208, page 422, Register's Office of Davidson

County.

16. A lot or parcel of land, bounded and described as follows: Beginning at the southeast corner of Cedar and Walnut Streets, thence extending in a southerly direction with the east line of Walnut Street 1213/4 feet; thence eastwardly, parallel with the south line of Cedar Street, 130 feet; thence northwardly, parallel with the east line of Walnut Street, 12134 feet to the south line of Cedar Street: thence with the south line of Cedar Street westwardly 130 feet to the point of beginning; the west 30 feet of said tract, fronting 1213/4 feet on the east line of Walnut Street, being the same conveyed to E. C. Lewis by Andrew Jackson, by deed dated March 4, 1890, registered in Book 208, page 420, Register's Office of Davidson County: the remainder of said tract, fronting 100 feet on the south side of Cedar Street, and extending southwardly 1213/4 feet, being the same conveyed to said Lewis by R. L. Weakley by deed dated March 8, 1890, registered in Book 159, page 529, Register's Office of Davidson County.

Two tracts or parcels of land, bounded and described as follows: The first beginning at a point on the north side of Cedar Street, southeast corner of the land owned by John Corcoran heirs, said corner being 71.6 feet more or less east of the east line of Belleville Street; thence extending in an easterly direction with the north line of Cedar Street 661/2 feet to an iron post, southwest corner of the land purchased by the Louisville & Nashville Railroad Company from B. B. Leake, by deed dated the 6th day of June, 1872; thence in a northerly direction with the west line of said Railroad Company's property 270 feet to the south line of Shankland street; thence in a westerly direction with the south line of Shankland Street 35 feet; thence in a southerly direction parallel with said Railroad Company's west line, 120 feet; thence in a westerly direction parallel with the north line of Cedar Street 311/2 feet to the northeast

corner of land belonging to the John Corcoran heirs; thence in a southerly direction parallel with said Railroad Company's west line, 150 feet to the point of begin-

ning.

The second beginning at a point on the north line of Cedar Street, southwest corner of lot belonging to Sarah Crahan; thence extending in a northerly direction with the west line of the lot of said Sarah Crahan 270 feet to the south line of Shankland Street; thence in a westerly direction with the south line of Shankland Street 88 feet more or less to the east line of the land purchased by the Louisville & Nashville Railroad Company from B. B. Leake by deed dated 6th day of June, 1872; thence in a southerly direction with the east line of said Railroad Company's land 90 feet to the north line of the land purchased by J. W. Thomas, agent, from Michael Quinn and wife, by deed dated the 21st day of September, 1886; thence in an easterly direction with the north line of said lot 29 feet more or less to the northeast corner of the same; thence in a southerly direction with the east line of said lot 180 feet more or less to the north line of Cedar Street; thence in an easterly direction with the north line of Cedar Street; thence in an easterly direction with the north line of Cedar Street 59 feet more or less to the point of beginning; said two tracts being the same conveyed to E. C. Lewis by Andrew Jackson by deed dated March 4, 1890, registered in Book 208, page 420, Register's Office of Davidson County.

Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by E. C. Lewis and Pauline D. Lewis, his wife, by deed dated the 31st day of March, 1896, registered in Book 207, page 481, Register's Office of Davidson County.

II.

1. All of lots numbers 81 and 83, in McNairy's Addition to the city of Nashville, each fronting 50 feet in the south side of McGavock Street, and extending southwardly between parallel lines 166 feet to an alley; also all of lots 145 and 147 in said Addition, each fronting 50 feet on the north side of Demonbreun Street and extending northwardly between parallel lines 166 feet to an alley; also a triangular-shaped tract of land, composed of lots numbers 294, 295, 296, and 329 in said McNairy's Addition to the city of Nashville, said tract fronting 208 feet on the south side of Laurel Street, and extending southwardly to Kayne Avenue, the west line of said tract

being parallel with McNairy Street, said lots or parcels of land being the same conveyed to J. W. Thomas, agent, by Alfred Kayne, by deed dated August 14, 1890, registered in Book 195, page 272, Register's Office of David-

son County.

All of lot No. 143, in McNairy's Addition to the city of Nashville, fronting 50 feet on the north side of Demonbreun Street, and extending northwardly, between parallel lines, 166 feet to an alley; also an irregular tract of land composed of lots 250 and 251 in said Addition, bounded and described as follows: Beginning at a point on the north line of Laurel Street, at the boundary line between lots 251 and 252, thence extending in a northerly direction with said boundary line 170 feet to an alley; thence in an easterly direction, with the south line of said alley 120 feet more or less to the west line of Kayne Avenue; thence in a southerly direction with the west line of Kayne Avenue to the north line of Laurel Street; thence in a westerly direction with the noth line of Laurel Street to the point of beginning; said lots or parcels of land being the same conveyed to J. W. Thomas, agent, by Alfred Kayne, by deed dated July 8, 1890, registered in Book 196, page 232, Register's Office of Davidson County.

All of lot No. 150, in McNairy's Addition to the city of Nashville, fronting 50 feet on the south side of Demonbreun Street, and extending southwardly, between parallel lines, 175 feet to an alley, it being the same conveyed to J. W. Thomas, agent, by Alfred Kayne, by deed dated September 13, 1890, and registered in Book 196, page 234, Register's Office of Davidson County.

All of lot No. 13, in McNairy's Addition to the city of Nashville, fronting 50 feet on the north side of Broad Street, and extending northwardly, between parallel lines, 175 feet more or less to an alley, it being the same conveyed to J. W. Thomas, agent, by the McGavock & Mt. Vernon Horse Railroad Company, by deed dated October 30, 1890, registered in Book 195, page 266, Regis-

ter's Office of Davidson County.

5. All of lots numbers 2 and 3 in J. E. Gleaves Addition to the city of Nashville, as recorded at page 116, Plan Book of the Chancery Court at Nashville, Tennessee, and at page 29 of Book 21, Register's Office of Davidson County, said lot No. 2 fronting 180 feet more or less on the north side of Gleaves Street, and lot No. 3 fronting 50 feet on the same side of said street, and adjoining said lot No. 2 on the west, both lots running back northwardly to the line of the Nashville, Chattanooga & St.

Louis Railway's land, and are of irregular depths, they being the same conveyed to J. W. Thomas, agent, by Minnie Gleaves, by deed dated February 5, 1886, registered in Book 93, page 329, Register's Office of Davidson County.

6. All of the tract of land known as lot No. 142, of McNairy's Addition to the city of Nashville, as it appears of record in the Register's Office of Davidson County, Book 9, page 328, bounded and described as follows:

Beginning at the intersection of the south line of Demonbreun Street, with what was originally the west line of the Middle Franklin Turnpike; running thence westwardly with the south line of Demonbreun Street 148 feet; thence southwardly, parallel with McNairy Street, 175 feet to an alley; thence eastwardly along said alley 32 feet to what was originally the west line of said Middle Franklin Turnpike; thence northwardly, with what was originally the west line of said turnpike, to the point of beginning; it being the same tract or parcel of land conveyed to said J. W. Thomas, agent. by E. C. Lewis, by deed registered in Book 83, page 428, Register's Office of Davidson County.

7. All of lots 139 and 140, in McNairy's Addition to the city of Nashville, each fronting 50 feet on the north side of Demonbreun Street, and extending northwardly between parallel lines to an alley; also all of lot No. 67 in said Addition, fronting 50 feet on the south line of McGavock Street, and extending southwardly between parallel lines to an alley, said lots being the same conveyed to J. W. Thomas, by Amanda J. Porter, by deed dated November 2, 1881, registered in Book 175, page 145,

Register's Office of Davidson County.

8. All of lot No. 141, in McNairy's Addition to the city of Nashville, fronting 50 feet on the north side of Demonbreun Street, and extending northwardly between parallel lines 166 feet to an alley, it being the same conveyed to J. W. Thomas, agent, by Henry Blackburn, et al., by deed dated April, 1884, registered in Book 83, page

582, Register's Office of Davidson County.

9. All of lots numbers 75, 77, and 79, in McNairy's Addition to the city of Nashvile, each fronting 50 feet on the south side of McGavock Street, and extending southwardly between parallel lines 166 feet to an alley; also lot No. 78 in said Addition, fronting 50 feet on the north side of McGavock Street, extending northwardly between parallel lines to an alley; also lot No. 4 in said Addition, fronting 50 feet on the south line of Broad Street, and

extending southwardly between parallel lines to an alley; said lot No. 75 being the same conveyed to J. W. Thomas, agent, by Theo. Robertson and wife, by deed dated November 21, 1882, and registered in Book 75, page 619, Register's Office of Davidson County; said lots 4, 77, and 78 being the same conveyed to said J. W. Thomas by Amanda J. Porter, by deed dated January 3, 1882, registered in Book 71, page 268; lot 79 being the same conveyed to said J. W. Thomas, agent, by Norman Kirkman, by deed dated April 14, 1884, registered in Book 83, page

585, Register's Office of Davidson County.

10. All of lots 66, 68, 70, 72, 74, and 76, of McNairy's Additon to the city of Nashville, each fronting 50 feet on the north side of McGavock Street, and extending northwardly between parallel lines to an alley; lots 66, 68, and 70 being the same conveyed to J. W. Thomas, by David Grewar and wife and Nora Moore, by deed dated November 7, 1881, registered in Book 70, page 511; and by deed to J. W. Thomas from J. N. Bertheol and wife, by deed dated December 14, 1881, registered in Book 71, page 140; and by deed to J. W. Thomas, agent, from Catherine de la Hay, by deed dated April, 1882, and registered in Book 72, page 299; and to J. W. Thomas by Robert Ewing, C. and M., by deed dated June 15, 1882, registered in Book 74, page 302, Register's Office of Davidson County; lots 72 and 74 being the same conveyed to J. W. Thomas, agent, by T. W. Wrenne, C. and M., by deed dated March 10, 1884, registered in Book 83, page 284, Register's Office of Davidson County; and lot 76 being the same conveyed to said J. W. Thomas, agent, by Thomas W. Wrenne, C. and M., by deed dated January 13, 1885, registered in Book 87, page 122, Register's Office of Davidson County.

11. Lots 1, 2, 3, 5, and 6, in McNairy's Addition to the city of Nashville, each fronting 50 feet on the south side of Broad Street and extending southwardly between parallel lines 175 feet to an alley. Lot No. 1 being the same conveyed to J. W. Thomas by H. H. Smith and wife by deed dated December 14, 1881, registered in Book 71, page 141, Register's Office of Davidson County. Lots 2 and 3 being the same conveyed to J. W. Thomas by the Nashville Commercial Insurance Company by deed dated October 28, 1881, and recorded in Book 70, page 459, Register's Office of Davidson County. Lots Nos. 5 and 6 being the same conveyed to J. W. Thomas, agent, by A. B. Tavel by deed dated April 9, 1884, registered in Book 83, page 584, Register's Office of Davidson County.

12. A tract or parcel of land situated in Hynes' Addition to the city of Nashville, bounded and described as follows: Beginning at a point on the east line of Mc-Creary Street, 235 feet north of the north line of Church Street; thence extending in a northerly direction with the east line of McCreary Street 250 feet; thence eastwardly 145 feet, thence southwardly parallel with McCreary Street 250 feet; thence westwardly 145 feet to the point of beginning. The south 50 feet of said tract being the same conveyed to J. W. Thomas, agent, by Lewis P. Holmes, by deed registered in Book 149, page 559, Register's Office of Davidson County; the adjoining 50 feet on the north being the same conveyed to J. W. Thomas, agent, by Thomas S. Weaver, C. and M., and R. W. Turner by deed dated February 28, 1896, and registered in Book 208, page 200, Register's Office of Davidson County; the remainder of said tract being the same conveyed to said J. W. Thomas, agent, by B. F. Lester by deed dated September 18, 1891, registered in Book 11, page 368, Register's Office of Davidson County.

A lot or parcel of land, being portions of lots 26 and 27 of John Cockrell's subdivision of Academy outlot, as subdivided and sold by the Chancery Court of Franklin, Tennessee, after his death, bounded and de-Beginning at a point on the north scribed as follows: line of Cedar Street 40 feet west of the southeast corner of lot 26; thence running northwardly, parallel with Belleville Street, 180 feet; thence eastwardly, parallel with Cedar Street, 40 feet; thence southwardly, parallel with Belleville Street, 180 feet to the north line of Cedar Street: thence westwardly with the north line of Cedar Street to the point of beginning, said tract being the same conveyed to J. W. Thomas, agent, by Michael Quinn and wife, by deed dated September 21, 1886, registered in Book 96, page 438, Register's Office of Davidson County.

Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by John W. Thomas, agent, and John W. Thomas and Evalena Debow Thomas, his wife, by deed dated the 27th day of March, 1896, registered in Book 207, page 487,

Register's Office of Davidson County.

III.

1. Lot No. 206, in McNairy's Addition to the City of Nashville, as shown by plan recorded in Book 9, page 323, Register's Office of Davidson County, said lot fronting 100 feet, more or less, on the south side of Grundy Street, and extending southwardly between parallel lines to Porter Street, it being the same conveyed to M. H. Smith, agent, by the Cumberland Electric Light and Power Company, by deed dated December 5, 1894, and registered in Book 195, page 269, Register's Office of Davidson County.

A lot or parcel of land, being a portion of the Fairfax estate, and bounded and described as follows: Beginning at a point on the south line of Cedar Street, 463 feet eastwardly from the east line of McCreary Street, said beginning point being the northwest corner of the property belonging to the Nashville, Chattanooga & St. Louis Railway, thence running westwardly along the south line of Cedar Street 3213/4 feet: thence in a southerly direction. parallel with McCreary Street, 140 feet to an alley; thence in an easterly direction with said alley 83% feet to the east line of Hynes' Addition to the city of Nashville; thence southwardly with the east line of said Hynes' Addition 524 feet, more or less, to the southeast corner of lot 114 in said Addition, better known as the "Church Lot'': thence eastwardly 165.4 feet to the west line of the property of the Nashville, Chattanooga & St. Louis Railway; thence northwardly with said west line 4631/2 feet to the point of beginning.

3. A lot or parcel of land beginning at a point on the south line of Cedar Street, 111½ feet eastwardly from the east line of McCreary Street; thence extending in a westerly direction with the south line of Cedar Street 61¼ feet; thence in a southerly direction parallel with McCreary Street 140 feet to an alley; thence eastwardly with said alley 61¼ feet; thence northwardly, parallel with McCreary Street, 140 feet to the point of beginning; said tract of land, numbers 2 and 3, being the same conveyed to the said M. H. Smith by Mattie F. Lusk, by deed dated March 23, 1893, registered in Book 208, page 418.

Register's Office of Davidson County.

4. A lot or parcel of land, being a part of lots numbers 8 and 7 in Hynes' Addition to the city of Nashville, plan of which is recorded in Book No. 1 of the Chancery Court of Davidson County, page 21, and in Minute Book "B," page 85, of said court. Said lot, more particularly described, begins at the northwest corner of lot No. 8, the intersection of the east line of McCreary Street with the south line of a 20-foot alley, said northwest corner also being 140 feet northwardly from the north line of Hynes Street; thence running in an easterly direction along the south line of said alley 100 feet to a point in the north

boundary line of lot No. 7 in said Hynes' Addition; thence parallel with McCrary Street southwardly 40 feet; thence in a westerly direction, parallel with said alley, 100 feet to the east line of McCreary Street; thence in a northerly direction, with the east line of McCreary Street, 40 feet to the place of beginning; said lot or parcel of land being the same conveyed to said M. H. Smith by Mary Ryan, by deed dated May 25, 1893, registered in Book No. 181, page 199, Register's Office of Davidson County.

5. A lot or parcel of land fronting 80 feet, more or less, on the north line of Pearl Street, bounded on the west by the line of Pat Cummins, on the east by the land of the Louisville & Nashville Railroad Company, upon which a trestle is situated, and on the north by a 10-foot alley, it being the same conveyed to said M. H. Smith, agent, by E. J. Plummer and wife, by deed dated May 3, 1893, registered in Book No. 179, page 291, Register's Office of Davidson County.

6. A lot or parcel of land, being the western 15 feet of lot No. 5, and all of lot No. 7 in the B. M. Barnes Plan, fronting 45½ feet on the south side of Gay Street, and extending southwardly, between parallel lines, 96½ feet to an alley, it being the same conveyed to M. H. Smith, agent, by M. Whitfield and wife, by deed dated May 8, 1893, registered in Book No. 178, page 409, Register's Office of Davidson County.

7. The south 37½ feet of lot No. 19 in the Lunatic Asylum Subdivision to the city of Nashville, fronting 37½ feet on the west side of Magazine Street, and extending westwardly between parallel lines 150 feet to an alley, it being the same conveyed to M. H. Smith, agent, by Robert Rodes and wife, by deed dated 4th day of February, 1894, and registered in Book No. 186, page 415, Register's Office of Davidson County.

Being all of the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by M. H. Smith and Annette Smith, his wife, by deed dated the 25th day of March, 1896, registered in Book 207, page 493, Register's Office of Davidson County.

IV.

1. All of lot No. 26, in the Lunatic Asylum Plan of lots, in Nashville, Tennessee, registered in Book 21, page 117, Register's Office of Davidson County, to which reference is hereby made; said lot fronting 50 feet on the west side of Magazine Street, and extending westwardly, between parallel lines, 150½ feet to an alley, it being the

same conveyed to G. Stritch by Nannie E. Portwood, by deed dated September 23, 1890, registered in Book 146,

page 478, Register's Office of Davidson County.

All of that part of lot No. 254 in McNairy's Addition to the city of Nashville bounded and described as follows: Beginning at a point in the north line of Laurel Street, and on the division line between lots 253 and 254 in said Addition; thence extending in a westerly direction with the north line of Laurel Street 45 feet; thence northwardly parallel with said division line 170 feet to an alley; thence eastwardly with said alley 45 feet to said division line; thence southwardly with said division line 170 feet to the point of beginning; it being the same conveyed to said G. Stritch by James Powers and wife, by deed dated November 19, 1889, registered in book 157, page 540, Register's Office of Davidson County.

Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by G. Stritch and Katie Stritch, his wife, by deed dated the 30th day of March, 1896, registered in Book 207,

page 496, Register's Office of Davidson County.

V.

Lot No. 144 of McNairy's Addition to the city of Nashville, as recorded in Plan Book 9, page 323, Register's Office of Davidson County, to which reference is hereby made; said lot fronting 50 feet on the south side of Demonbreun Street, and running southwardly between parallel lines 175 feet to an alley, it being the same conveyed to said J. W. Simmons by W. M. Baxter and wife, by deed dated March 22, 1889, registered in Book 208, page 417, Register's Office of Davidson County.

Being the piece or parcel of land, with its appurtenances, conveyed to the Terminal Company by J. W. Simmons and Martha Simmons, his wife, by deed dated the 31st day of March, 1896, registered in Book 207, page 497,

Register's Office of Davidson County.

VI.

Lot No. 85 in McNairy's Addition to the city of Nashville, plan of which is recorded in Book 9, page 323, Register's Office of Davidson County, said lot fronting 50 feet on the south side of McGavock Street, and extending southwardly, between parallel lines, 166 feet to an alley.

Being the piece or parcel of land, with its appurtenances, conveyed to the Terminal Company by Norman Kirkman and Nellie M. Kirkman, his wife, by deed dated the 6th day of April, 1896, registered in Book 207, page 498, Register's Office of Davidson County.

VII.

1. Lot No. 16, in McNairy's Addition to the city of Nashville, plan of which is recorded in Book 9, page 323, Register's Office of Davidson County; said lot fronting 50 feet on the south side of Broad Street, and extending southwardly between parallel lines 169 feet to an alley.

2. Lot No. 86, in said McNairy's Addition to the city of Nashville, said lot fronting 50 feet on the north side of McGavock Street, and extending northwardly between parallel lines 166 feet to an alley; the above described pieces or parcels of land being the same conveyed to E. L. More by Peter Murray, by deed dated June 21, 1890, and registered in Book 158, page 580, Register's Office of Davidson County.

Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by E. L. More, by deed dated the 28th day of March, 1896, registered in Book 207, page 499, Register's Office

of Davidson County.

VIII.

All of lot No. 17, in McNairy's Addition to the city of Nashville, as per plan in Chancery Court Plan Book—, page 15, said lot fronting 50 feet on the north side of Broad Street, and extending northwardly, between parallel lines, 175 feet to an alley, it being the same conveyed to Pauline D. Lewis by Albert B. Tavel, by deed dated September 24, 1890, registered in Book 147, page 595, Register's Office of Davidson County.

Being the piece or parcel of land, with its appurtenances, which was conveyed to the Terminal Company by Pauline D. Lewis and E. C. Lewis, her husband, by deed dated the 31st day of March, 1896, registered in Book 207,

page 500, Register's Office of Davidson County.

IX.

1. Lot No. 80 of the McNairy Plan of West Nashville, as of record in Plan Book No. 9, page 323, Register's Office of Davidson County. Said lot fronts 50 feet on the north side of McGavock Street, and runs back between parallel lines 169 feet to an alley.

2. Lot No. 14 of the above-mentioned plan, fronting 50 feet on the south side of Broad Street, and running back between parallel lines 169 feet to a 12-foot alley, being the same lot among other lots conveyed by John Kirkman to James P. Kirkman, Trustee, by deed recorded in Register's Office of Davidson County, Book 37, page 690, and alloted to Mrs. A. K. Berry by decree of Chancery Court in the case of H. C. Prichett, et al., v. Mary N. Kirkman, et al., recorded in Minute Book 2, page 468.

3. Lot No. 252 in the above-mentioned plan, fronting 50 feet on the north side of Laurel Street, and running

back 175 feet with equal width to a 12-foot alley.

Being all of the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by Edgar Jones, Trustee, by deed dated the 5th day of August, 1890, registered in Book 208, page 416, Register's Office of Davidson County.

X.

Lot No. 13 in the Lunatic Asylum Subdivision in the city of Nashville, Tennessee, fronting 50 feet on Kayne Avenue, and running back at right angles to the point between parallel lines, 150 feet to a 10-foot alley, this being the same lot bought by C. C. Christopher, agent, of George Spencer and F. A. Spencer, as shown in Book 207, page 187, Register's Office of Davidson County.

Being the piece or parcel of land with its appurtenances, which was conveyed to the Terminal Company by C. C. Christopher, agent, by deed dated the 3d day of March, 1896, registered in Book 208, page 426, Register's

Office of Davidson County.

XI.

A part of lot No. 120 of Hynes' Addition to the city of Nashville, County of Davidson, and State of Tennessee, bounded and described as follows: Beginning at a point in the south line of Church Street, on the dividing line between lots numbers 120 and 121 of said Hynes' Addition: thence running in an easterly direction with the south line of Church Street forty-five feet to a point; thence in a southerly direction, parallel to the east line of McCreary Street, one hundred and forty feet to a point on the north line of lot No. 122 of said Addition; thence in a westerly direction with said north line of lot No. 122, forty-five feet to a point on the dividing line between lots numbers 120 and 121 of said Addition; thence in a northerly direction with the said dividing line be-

tween lots numbers 120 and 121, one hundred and forty feet to the point of beginning; it being the same conveyed to J. W. Thomas, agent, by J. R. Sneed, Mary Sneed, Jos. T. Watts, and John Tansey, by deed dated March 31, 1896, and registered in Deed Book 207, page 508, Register's Office of Davidson County; and to the Terminal Company by J. W. Thomas, agent, by deed dated April 24, 1896, and registered in Deed Book 206, page 506, Register's Office of Davidson County.

XII.

All of lots numbers 15 and 207 of McNairy's Addition to the city of Nashville, lot No. 15 fronting 50 feet on the north side of Broad Street, and extending northwardly, between parallel lines, 175 feet to an alley. Lot No. 207 fronting 50 feet on the south side of Porter Street, and extending in a southerly direction, between parallel lines, 175 feet to an alley, they being the same conveyed to the Terminal Company by Thos. S. Weaver, C. and M., and E. C. Lewis, by deed dated April 29, 1896, and registered in Deed Book 208, page 461, Register's Office of Davidson County.

Also all other pieces and parcels of land which may be hereafter acquired by the first party within the corporate limits of the city of Nashville, whether the same be acquired by purchase, condemnation, lease, or other-

wise.

TO HAVE AND TO HOLD the said premises, with the appurtenances thereunto belonging, including all rights of way, ways, and other easements, all passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures, all main and side railroad tracks, switches, cross-overs, turn-outs, and all other terminal facilities now located or hereafter to be erected or constructed upon said premises, or any part or portion thereof, unto said second parties, and their respective successors and assigns, for the term of nine hundred and ninetynine years from the first day of July, 1896.

ARTICLE II.

Heretofore, to-wit, on the 27th day of April, 1896, the Nashville, Chattanooga & St. Louis Railway, by a certain lease, granted and demised, and to farm let, to said first party, its successors and assigns, various pieces or parcels of land, situated in said city, county, and State, for a term of nine hundred and ninety-nine years from the

first day of May, 1896, upon certain covenants, provisos, and conditions, as in and by said lease, on reference thereto, will more fully appear, and the Louisville & Nashville Railroad Company joined in said lease for the purpose of granting and demising to said first party all rights and privileges in the demised property which it, said Louisville & Nashville Railroad Company, was entitled to under a certain agreement between the Nashville & Chattanooga Railroad Company and the Louisville & Nashville Railroad Company, dated the first day of May, 1872. Said pieces or parcels of land, so granted, demised, and to farm let by said lease of the 27th day of April, 1896, are bounded and described as follows, viz.:

PROPERTY BETWEEN CEDAR AND CHURCH STREETS.

Beginning at the northeast corner of Church and Mc-Creary Streets, running thence eastward with the north line of Church Street, 435.2 feet to the southwest corner of a 45-foot lot owned by Jas. McKeon; thence northwestward, parallel with Walnut Street and with said Mc-Keon's west line, which is the east line of a lot sold by T. P. Brady to the Nashville, Chattanooga & St. Louis Railway, by deed recorded in Book 83, page 134, Register's Office of Davidson County, 178.3 feet to McKeon's northwest corner, being the southwest corner of a lot sold by Jas. McKeon to the Nashville, Chattanooga & St. Louis Railway, by deed recorded in Book 39, page 603, Register's Office of Davidson County; thence eastward, at right angles, 45 feet with McKeon's north line to said McKeon's northeast corner; thence southward, parallel with Walnut Street and with McKeon's east line, 175.8 feet to a point in the north line of Church Street 480.2 feet east of McCreary Street; thence eastward with the north line of Church Street 292.8 feet, more or less, to the northwest corner of Church and Walnut Streets; thence northward with the west line of Walnut Street 1,048,5 feet to the southwest corner of Cedar and Walnut Streets: thence westward with the south line of Cedar Street 454 feet to the northeast corner of the Lusk property, which is 463 feet eastward from the southeast corner of Cedar and McCreary Streets; thence southward with the line between the Lusk property and the lot sold to the Nashville & Chattanooga Railroad by Vannoy Turbeville & Co., by deed recorded in Book 32, page 165, Register's Office of Davidson County, 643.5 feet, more or less, to the north line of the property sold by John Baird to the Nashville & Chattanooga Railroad by deed recorded in Book 39, page 599, Register's Office of Davidson County;

thence westward with said line 165.4 feet, more or less, to the southwest corner of the Lusk property, which is the southeast corner of lot No. 114, Hynes' Addition, sold by the Capers Chapel to the Nashville, Chattanooga & St. Louis Railway by deed recorded in Book 104, page 461. Register's Office of Davidson County; thence northward with the line between said lot 114 and the Lusk property 145 feet, more or less, to the south line of Hynes Street: thence westward with the south line of Hynes Street 215 feet, more or less, to the southeast corner of Hynes and McCreary Streets; thence southward with the east line of McCreary street 70 feet, more or less, to the line between lots 112 and 13, Hynes' Addition; thence eastward with said line 145 feet to the west line of said lot 114; thence southward, parallel with and 145 feet from the east line of McCreary Street, with the line between the said John Baird property and Hynes' Addition, 245 feet, more or less, to the northeast corner of lot 117, Hynes' Addition; thence westward with the line between lots 117 and 116, Hynes' Addition, 145 feet to the east line of McCreary Street; thence southward with the east line of McCreary Street 225 feet to the beginning point.

PROPERTY BETWEEN CHURCH AND BROAD STREETS.

Beginning at a point in the north line of Broad Street 80.3 feet west of its intersection with the west line of Walnut Street, running thence northward with the west side of a stone wall 242.5 feet; thence eastward 67 feet to a point in the west line of Walnut Street, distant 234.5 feet from the north line of Broad Street; thence northward with the west line of Walnut Street 793.1 feet to the southwest corner of Church and Walnut Streets; thence westward with the south line of Church Street 619.3 feet to the east line of Hynes' Addition; thence southward 347.5 feet, more or less, to the north line of Grundy Street; thence eastward with the north line of Grundy Street 7 feet, thence southward, along the east line of lots 206, 207, and 13, of McNairy's Addition, 660.2 feet to the north line of Broad Street; thence eastward with the north line of Broad Street 498 feet, more or less, to the beginning.

PROPERTY BETWEEN BROAD AND SPRUCE STREETS.

Lots 69, 71, and 73 of McNairy's plan of West Nashville, fronting 150 feet on the south side of McGavock Street, and running back between parallel lines at right angles thereto, 166 feet to a twelve-foot alley, being the same lots conveyed to the Nashville, Chattanooga & St.

Louis Railway by deeds as follows: Lot 69, by Chancery Court decree, recorded in Book 169, page 181, Register's Office of Davidson County; lot 71, by C. D. Berry and wife, by deed recorded in Book 69, page 273, Register's Office of Davidson County; and lot 73, by W. H. Fletcher and wife, by deed recorded in Book 79, page 148, Register's Office of Davidson County. Also lot No. 138, Mc-Nairy's plan of West Nashville, described as follows: Beginning at the northwest corner of Demonbreun Street and the old middle Franklin Turnpike; thence westward with the north line of Demonbreun Street 34.8 feet to the southeast corner of lot No. 139; thence northward with the line between lots 138 and 139, 166.2 feet to a 12-foot alley; thence eastward with the south line of said alley. 145.4 feet to the west line of said turnpike; thence southwestward with said west line of said turnpike 200 feet, more or less, to the beginning, being the same lot conveved to the Nashville, Chattanooga & St. Louis Railway by Robt. Ewing, C. and M., by deed recorded in Book 68,

page 465, Register's Office of Davidson County.

Also, beginning at a point in the southern line of Broad Street, 20 feet west of the center line of the main track of the Nashville, Chattanooga & St. Louis Railway, and in the line of the right of way of said road; thence southward parallel with said railroad and 20 feet therefrom, 629.5 feet, more or less, to a point in the south line of the old middle Franklin Turnpike, 20 feet west of the center line of the main track of the Nashville, Chattanooga & St. Louis Railway, which point is the northwest corner of lot No. 1, in the McClean plan of lots, which plan is registered in Book 21, page 44, Register's Office of Davidson County, running thence southward along said line of said turnpike 250 feet to the southwest corner of lot No. 4 of said McClean plan, where there is an offset in said line of said turnpike; thence eastward with the south line of said lot No. 4 and with the said offset in said turnpike line 141/2 feet to the line of said turnpike, where it was fifty 50 wide; thence southward with the said line of said turnpike 881 feet to the southwest corner of a lot sold by S. G. Moore and wife and others to the Nashville, Chattanooga & St. Louis Railway, by deed recorded in Book 47, page 265, Register's Office of Davidson County; thence eastward with the south line of said last named lot 532 feet, more or less, to the center line of Overton Street, if extended: thence northward with the center line of Overton Street, if extended, 170 feet, more or less, to the southwest corner of a lot sold by Wm. Woodfolk to the Nashville, Chattanooga & St. Louis Railway, by deed

recorded in Book 69, page 274, Register's Office of Davidson County, which corner is the same as point C described in said deed; thence eastward with the south line of the last named lot, passing through the northwest corner of the Lanier Mill building, 198 feet, more or less, to a point in the face thereof about 14 feet from the said corner. and 48 feet, more or less, distant from the center line of the main track of the Nashville, Chattanooga & St. Louis Railway: thence southwardly along the face of said mill. 163 feet to an angle therein, which is 33.9 feet from the center of said main track; thence southwardly along the face of said mill, parallel with the said railroad, and 33.9 feet from its center line, 171.5 feet, more or less, to a point in the center of what was formerly Hay Street; thence south with the said center line of Hay Street 104 feet, more or less, to the north line of a 10-foot allev. which runs parallel to Gleaves Street: thence eastwardly along the north line of said alley, 168 feet to the west line of a 12-foot alley; thence northwardly along said line 101/2 feet, more or less, to the right of way line of the Nashville, Chattanooga & St. Louis Railway, 20 feet from the center line of the main track of the same; thence southeastward along said right of way line 272 feet, more or less, to the northwest corner of Gleaves and Spruce Streets: thence northward with the west line of Spruce Street 87 feet, more or less, to the line of the right of way of said railroad, 30 feet from its center line, thence northwestward along said right of way line 240 feet, more or less, to the west line of a 12-foot alley at a point 20 feet northeastward from the center line of said railroad; thence north with the west line of said alley 93 feet, more or less, to the northeast corner of a lot conveyed to the Nashville, Chattanooga & St. Louis Railway by Robert Ewing, C. and M., by deed recorded in Book 68, page 263, Register's Office of Davidson County: thence westward with the north line of said lot, passing through the Nashville Mills building, 136 feet, more or less, to a point in the face thereof 25.5 feet from the center line of the main track of said railroad; thence northwestward, parallel with said railroad, and along the face of said mill, 112 feet, more or less, to the northwest corner of said mill building: thence northeastward at right angles to the face of said mill, 13 inches, more or less, to the northern face of a brick boundary wall, erected by the Nashville, Chattanooga & St. Louis Railway; thence northwestward along the face of said wall, parallel with said railroad, 106 feet to an offset; thence southwestward at right angles along said offset 12.5 feet to the face of said wall, at a

point 14 feet from the center line of the main track of said railroad; thence northwestward along the face of said wall 80 feet to a point 13.4 feet from the center line of said main track, at the point of curve of the same; thence northward along said wall in a curve to the right, 200 feet to a point 14.4 feet from said center line; thence northward along said wall 200 feet to a point 14.1 feet from said center line; thence northward along said wall 160 feet to a point 13.7 feet from the center of said railroad, at the point of tangent thereof; thence northward with the face of said wall in a straight line along the line of an alley and South Walnut Street 1,325 feet, more or less, to its intersection with the south line of Broad Street, at a point 20.5 feet from the center line of said main track; thence westward with the southern line of Broad Street 40.5 feet to a point in the right of way line 20 feet west of the center line of said railroad to the beginning.

Also, all rights of way, railroad tracks, and property of every other description which the first party has in or across Cedar Street, east of the west line of Belleville Street; and all rights of way, railroad tracks, and property of every other description which the first party has in or across Church Street and in or across Broad Street.

Said first party hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto said second parties, and their respective successors and assigns, each and all of said pieces or parcels of land described in this Article, with the appurtenances, including all rights of way, ways, and other easements, all passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures, all main and side railroad tracks, switches, cross-overs, and turn-outs, and all other terminal facilities now located, or hereafter to be erected or constructed upon said premises described in this Article, or any part or portion thereof; also all the estate, right, title, and interest, and the said term of years, yet to come and unexpired, and all the property, claim, and demand whatsoever of said first party, of, in, and to the same, and every part and parcel thereof, together with said lease itself, and all rights of renewal or extension of the same, now owned by said first party.

TO HAVE AND TO HOLD said pieces or parcels of land described in this Article, and hereby granted and assigned, and every part thereof, unto said second parties, and their respective successors and assigns, for and during the residue of said term of years, in and by said lease granted, in as full, large, and ample a manner, to all intents and purposes, as said first party, or its successors, or assigns now holds, or may at any time hold and enjoy the same, by virtue of said lease, subject, nevertheless, to the several rents, covenants, provisos, and conditions in the said lease reserved and contained.

ARTICLE III.

Heretofore, to-wit, on the 27th day of April, 1896, the Louisville & Nashville Railroad Company, by a certain lease, granted and demised and to farm let to said first party, its successors and assigns, various pieces or parcels of land, situated in said city, county, and State, for a term of nine hundred and ninety-nine years from the first day of May, 1896, upon certain covenants, provisos, and conditions, as in and by said base, on reference thereto, will more fully appear; and the Nashville, Chattanooga & St. Louis Railway joined in said lease for the purpose of granting and demising to said first party all rights in the demised property which it, said Nashville, Chattanooge & St. Louis Railway, was entitled to under a certain agreement between the Nashville & Chattanooga Railroad Company and the Louisville & Nashville Railroad Company, dated the first day of May, 1872. Said pieces or parcels of land, so granted, demised, and to farm let by said lease of the 27th day of April, 1896, are bounded and described as follows, viz.:

1. A lot of land beginning at a stake on the south side of Gay Street, the northeast corner of a tract of land owned in 1858 by Wm. Copers, and running thence southerly at right angles, 110 feet, more or less, to an alley; thence in an easterly direction with said alley 38 feet; thence in a northerly direction 110 feet to a point on the south line of Gay Street; thence in a westerly direction

38 feet to the place of beginning.

2. A triangular lot beginning at a point on the south side of Gay Street, at the intersection of the east line of the lot described in Description No. 1; thence in a southerly direction with the west line of lot described in Description No. 1, 25 feet; thence in a northeasterly direction 25 feet, more or less, to a point on the south side of Gay Street, 4 feet east of the east line of lot described in Description No. 1; thence in a westerly direction, with the south line of Gay Street, 4 feet to the point of beginning.

3. A lot or parcel of land, being all of lot No. 2 and 18½ feet off the east side of lot No. 4, of the B. M. Barnes

Addition to the city of Nashville, fronting 52 feet on the north side of Pearl Street and extending north between

parallel lines 110 feet, more or less, to an alley.

A lot or parcel of land beginning at a point on the south line of Pearl Street, being the northwest corner of the land originally owned by H. Murray; thence southerly, at right angles to Pearl Street, 60 feet; thence westerly, parallel to Pearl Street, 15 feet; thence southerly at right angles 165 feet 7 inches, more or less, to the north line of Shankland Street; thence in a westerly direction with the north line of Shankland Street 80 feet; thence in a northerly direction at right angles, 225 feet 7 inches, more or less, to the south line of Pearl Street: thence in an easterly direction with the south line of Pearl Street 95 feet to the point of beginning.

A lot or parcel of land beginning at a point on the north line of Cedar Street 138 feet 1 inch easterly from the east line of Belleville Street: thence running northerly, parallel with Belleville Street, 248 feet to the south line of Shankland Street; thence easterly along the south line of Shankland Street 35 feet; thence southerly at right angles 68 feet; thence westerly, parallel with Cedar Street, 11 feet; thence in a southerly direction 180 feet to Cedar Street; thence in a westerly direction with the north line of Cedar Street 24 feet to the place of begin-

ning.

Also the railroad and right of way on which the same is constructed from the south line of Gav Screet over the lots above described and across Pearl and Shankland and Cedar Streets, to the south line of Cedar Street.

And the Terminal Company may deem it necessary to hereafter acquire by lease, or assignment of lease, other pieces or parcels of land, with their appurterances, situated in said city of Nashville, in the State of Ten-

nessee.

Said first party hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto said second parties, and their respective successors and assigns, each and all of said pieces or parcels of land described in this Article, with the appurtenances thereunto belonging, including all rights of way, ways, and other easements, and all railroad tracks and all other terminal facilities now located, or hereafter to be erected or constructed upon said premises described in this Article, or any part or portion thereof; also all the estate, right, title, and interest, and the said term of years yet to come and unexpired, and all the property,

claim, and demand whatsoever of said first party, of, in, and to the same, and every part and parcel thereof, together with said lease itself, and all rights of renewal or extension of the same, now owned by said first party.

TO HAVE AND TO HOLD said pieces or parcels of land described in this Article, and hereby granted and assigned, and every part thereof, unto said second parties, and their respective successors and assigns, for and during the residue of said term of years, in and by said lease granted, in as full, large, and ample a manner, to all intents and purposes, as said first party, or its successors or assigns, now hold, or may at any time hold and enjoy the same, by virtue of said lease, subject, nevertheless, to the several rents, covenants, provisos, and conditions in the said lease reserved and contained.

ARTICLE IV.

Said first party doth hereby, for itself, its successors, and assigns, covenant with said second parties, and their respective successors and assigns, that they, paying the rent hereinafter reserved, and performing the covenants hereinafter on their part contained, shall and may peaceably possess and enjoy the premises described in the first Article, for the term granted in said first Article, without any interruption or disturbances from said first party, or its successors or assigns, or any other person or persons whomsoever lawfully claiming by, from, or under said first party, or its successors or assigns.

ARTICLE V.

Said first party doth hereby, for itself, its successors, and assigns, covenant with said second parties, and their respective successors and assigns, that notwithstanding any act, deed, or thing, whatsoever made, done, or suffered to the contrary, by said first party, or its successors or assigns, the said lease executed by the said Nashville, Chattanooga & St. Louis Railway mentioned in the second Article, and the said lease executed by the said Louisville & Nashville Railroad Company, mentioned in the third Article, are still in force, for the respective residue of the said terms therein specified, and thereby granted; and neither void nor voidable. And also, that notwithstanding any such act, deed or thing, as aforesaid, said first party now hath, in itself, good right, by these presents, to assign the said premises described in the second and third Articles, respectively, together with their appurtenances, unto said second parties, and their respective suc-

cessors and assigns, for the respective residue of the said terms, in manner aforesaid. And also, that subject to the payment of rent, and the performance of the covenants, provisos, and conditions in the said two last mentioned leases contained, and by, and on the part of said first party, its successors and assigns, to be observed and performed, it shall be lawful for said second parties, and their respective successors and assigns, henceforth, during the respective residues of the said terms, to enter into, and upon, hold, and enjoy the said premises described in the second and third Articles respectively, together with their appurtenances, and to receive and take the rents and profits thereof, without any hindrance or interruption whatsoever of said first party, its successors or assigns, or any other person or persons whomsoever, lawfully claiming by, from, or under said first party, its successors or assigns.

ARTICLE VI.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, on or beore the expiration of the term in the first Article granted, at the request and expense of said second parties, or their respective successors or assigns, grant and execute to them a new lease of the premises demised and described in the first Article, together with their appurtenances, for the further term of nine hundred and ninety-nine years, to commence from the expiration of said term in the first Article granted, at the same yearly rent, payable in like manner, and subject to the like covenants, provisos, and conditions (except a covenant for further renewal) as are contained in these presents in relation to said premises.

ARTICLE VII.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, on or before the expiration of the terms granted in the leases mentioned in the second and third Articles, at the request and expense of said second parties, or their respective successors or assigns, grant and execute to them assignment of any new leases which said first party, its successors or assigns, may hereafter obtain of the premises assigned and described in said second and third Articles, together with their ap-

purtenances, for the further term of nine hundred and ninety-nine years, to commerce from the expiration of the terms granted in said leases mentioned in the second and third Articles.

ARTICLE VIII.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will henceforth, during the residue of the term granted in the first Article, and during the residue of the term that may be granted in any new lease which may be executed, as provided in the sixth Article, upon every reasonable request, and at the cost of said second parties, or their respective successors or assigns, make, do, and execute, or cause to be made, done, and executed, all such reasonable acts, deeds, and assurances in the law, whatsoever, for the further, better, or more satisfactorily granting, demising, or assuring the said premises, or any part thereof, described in the first Article, together with their appurtenances, unto said second parties, and their respective successors and assigns, for the then residue of the term granted in said first Article, or for the then residue of the term that may be granted in any new lease which may be executed, as provided in the sixth Article, as by said second parties, or their respective successors or assigns, or their counsel in the law, shall be reasonably required, and be tendered to be made, done, and executed.

And upon like reasonable request, and at the like cost, of said second parties, or their respective successors or assigns, said first party, its successors and assigns, will, henceforth, during the respective residue of the said terms qualified in the said leases mentioned in the second and third Article, make, do, and execute, or cause to be made, done, and executed, all such lawful and reasonable acts, deeds, and assurances in the law, whatsoever, for the further, better, or more satisfactorily assigning or assuring the said premises, or any part thereof, described in the second and third Articles, together with their appurtenances, unto said second parties, and their respective successors and assigns, for the then respective residue of the said terms specified in the said lease mentioned in the second and third Articles, as by said second parties, or their respective successors or assigns, or their counsel in the law, shall be reasonably required and be tendered to be made, done, and executed.

ARTICLE IX.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, with all reasonable dispatch, and during the term granted in the first Article, erect and construct upon the premises described in the first, second, and third Articles, all such passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures and all such main and side railroad tracks, switches, cross-overs, and turn-outs, and all such other terminal facilities as may be necessary to provide suitable and adequate railroad terminal facilities for such of the railroads centering at Nashville, Tennessee, as may contract therefor, with said first party, its successors or assigns.

ARTICLE X.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that as soon as the same shall be erected or constructed, said first party, its successors and assigns, shall and will, forthwith insure against loss by fire the improvements described in the ninth Article as passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures, main and side railroad tracks, switches, cross-overs, and turn-outs, and other terminal facilities, which may be hereafter erected, or constructed, upon the premises, or preperty, described in the first, second, and third Articles, and all additions thereto, and extensions thereof; that the same shall be so insured, to the full value thereof, in some respectable insurance company, or companies; that the same shall be kept so insured during the term granted in the first Article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth Article, and during the terms that may be assigned in any assignments of the leases, mentioned in the second, third, and seventh Articles; and as often as the property so insured shall be burned down or damaged by fire, all and every the sum or sums of money which shall be recovered or received by said first party, its successors or assigns, for, or in respect of, such insurance, shall be paid over by said first party, its successors or assigns, to said second parties, or their respective successors or assigns, to be laid out and expended by them in rebuilding

or repairing the property so insured or such parts thereof as shall be destroyed or injured by fire.

ARTICLE XI.

Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, shall, and will, during the term granted in the first Article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth Article, and during the terms that may be assigned in any assignments of the leases mentioned in the second, third, and seventh Articles, pay and discharge all taxes, rates, charges, and assessments that may be levied or imposed, during the term or terms aforesaid, upon said premises or property described in the first, second, and third Articles, and the improvements described in the ninth Article as passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops and other buildings, erections, and structures, main and side railroad tracks, switches, crossovers, and turn-outs, and other terminal facilities which may be hereafter erected or constructed upon the premises or property described in the first, second, and third Articles, and all additions thereto, and extensions thereof.

ARTICLE XII.

Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with said first party, its successors and assigns, that as rent for the premises, or property described in the first Article, and for rent of the improvements described in the ninth Article as passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures, and main and side railroad tracks, switches, cross-overs, and turnouts, and other terminal facilities, and all additions thereto and extensions thereof, said second parties, and their respective successors and assigns, will pay to said first party, its successors and assigns, annually, in each and every year during the term granted in said first Article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth Article, and during the term that may be assigned in any assignments of the leases mentioned in the second, third, and seventh Articles, a sum equal to interest at four per cent per annum upon the actual cost of all expenditures

heretofore made, or to be hereafter made by said first party, its successors and assigns, from time to time, in the purchase, or other acquisition of said premises or property, and in the erection and construction of said improvements, and of all additions thereto, and extensions thereof, and to all taxes, rates, charges, and assessments that may be levied or imposed during the term or terms aforesaid, upon said premises, or property, and said improvements, and all additions thereto, and extensions thereof, and to the cost of such insurance as may be necessary to keep said premises, or property, and said improvements and all additions thereto, and extensions thereof, insured to their full value during the term or terms aforesaid.

On the first day of October in each and every year, during the term or terms aforesaid, the sum which will be due as rent aforesaid for the next succeeding year upon the basis in this Article established, shall be ascertained and fixed by the parties hereto; and the sum so ascertained and fixed shall be paid by said second parties, and their respective successors and assigns, to said first party, and its successors and assigns, in equal quarterly payments on the first days of October, January, April, and July in the year for which said sum may be so established and fixed.

ARTICLE XIII.

Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with said first party, its successors and assigns, that said second parties, and their respective successors and assigns, shall and will, from time to time, and at all times during the respective residues of the said terms specified in the said leases, mentioned in the second and third Articles, well and truly pay, or cause to be paid, unto the lessors mentioned in said leases respectively, or unto such person, or persons, as for the time being shall be entitled to receive the same, the yearly rents by the said leases respectively reserved and made payable, which from thenceforth shall grow due; and also well and truly perform, fulfill, and keep all and singular the covenants, provisos, and conditions contained in said leases respectively; and which, by, and on the part of said first party, or said second parties, is, or are, to be paid, observed, and performed; and also shall, and will, from time to time, and at all times, well, and sufficiently save, defend, keep harmless, and indemnified, said first party, its successors and assigns, from and against all costs, charges, damages,

and expenses whatsoever, which it, or they, or either of them, shall, or may sustain, or become liable to, by reason or means of said second parties, or their respective successors or assigns, not paying all or any part of the said rents from time to time, to become due for, or in respect of said premises, or any part or portion of them, and their appurtenances, assigned in the second and third Articles, from and after the execution of these presents, or by reason or means of their not observing and fulfilling any of the covenants, provisos, or conditions in the said leases respectively reserved and contained, which by, and on the part of said second parties, and their respective successors and assigns, are to be observed, performed, fulfilled, and kept.

ARTICLE XIV.

Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that said second parties, and their respective successors and assigns, shall, and will, during the term granted in the first Article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth Article, and during the terms that may be assigned in any new assignments of the leases mentioned in the second, third, and seventh Articles, at their proper costs, and charges, well and sufficiently maintain, and keep in repair, when, and as often as the same shall require, the premises described in the first, second, and third Articles, together with their appurtenances, including all rights of way, ways, and other easements, all such passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures, and all such main and side railroad tracks, switches, cross-overs, and turn-outs, and all such other terminal facilities, as may be hereafter erected or constructed by the first party, its successors or assigns, upon the premises described in the first, second, and third Articles. And also, that in case the same, or any part thereof, shall, at any time during said terms, or during either of them, be destroyed or injured by fire, wind, or lightning, said second parties and their respective successors and assigns, shall, and will, at their proper costs and charges, forthwith proceed to rebuild or repair the same, in as good condition as the same were before such destruction or injury. Provided, however, that all and every the sums or sum of money which shall be recovered or received by said first party, its successors

or assigns, for or in respect of any insurance upon any of such property, shall be paid over by said first party, its successors and assigns, to said second parties, their respective successors or assigns, to be laid out and expended by them in rebuilding or repairing the property so insured, or such parts thereof as shall be destroyed or injured by fire, as provided in the tenth Article.

ARTICLE XV.

Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that it shall be lawful for said first party, its successors or assigns, by its or their agent, or agents, at all seasonable times, during the term granted in the first Article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth Article, and during the terms that may be assigned in any new assignment of the leases mentioned in the second, third, and seventh Articles, to enter upon the premises described in the first, second, and third Articles, and to examine the condition of the said premises; and further, that all wants of reparation which, upon such views, shall be found, and for the amendment of which notice in writing shall be left at the premises, said second parties, and their respective successors and assigns, shall and will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

ARTICLE XVI.

Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that at the expiration of the term granted in the first Article, and at the expiration of the term that may be granted in any new lease which may be executed, as provided in the sixth Article, or at any sooner termination of this present lease, or of any such new lease, said second parties, and their respective successors and assigns, shall, and will, peaceably surrender and yield up unto said first party, its successors and assigns, the premises described in the first Article, with their appurtenances.

ARTICLE XVII.

Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that if the rents reserved in the twelfth Article, or any part thereof, shall be unpaid for fifteen days after any of the day on which the same ought to have been paid (although no formal demand shall have been made thereof), or, in case of the breach or non-performance of any of the covenants, provisos, or conditions herein contained, on the part of the said second parties, and their respective successors and assigns, then it shall be lawful for said first party, its successors or assigns, at any time thereafter, into and upon the premises described in the first Article, or any part thereof, in the name of the whole, to re-enter, and the same again repossess and enjoy, as of its or their former estate, any thing hereinbefore contained to the contrary notwithstanding.

IN WITNESS WHEREOF, The said parties hereto have caused these presents to be signed by their respective Presidents or Vice-Presidents attested by their respective Secretaries or Assistant Secretaries, and their respective corporate seals to be hereunto affixed, the date

above written.

LOUISVILLE & NASHVILLE TERMINAL COMPANY,

By M. H. Sмітн, President.

[L. & N. T. Co. SEAL.] Attest:

> J. H. Ellis, Secretary.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

S. R. KNOTT, First Vice-President.

[L. & N. R. R. Co. SEAL.]

J. H. Ellis, Secretary.

Nashville, Chattanooga & St. Louis Railway, By

J. W. Thomas, President.

[N., C. & St. L. R'y SEAL.] Attest:

J. H. Ambrose, Secretary. STATE OF KENTUCKY, Sct.:

Personally appeared before me, Thos. B. Harrison, Jr., a Notary Public in and for the State and County aforesaid, M. H. Smith and J. H. Ellis, with whom I am personally acquainted, and who are known to me to be the President and Secretary respectively of the Louisville & Nashville Terminal Company, the within named bargainor, and who acknowledged that they executed the within instrument for and on behalf of said Louisville & Nashville Terminal Company for the purposes therein contained. My commission expires July 10th, 1896.

Witness my hand and seal this June 18, 1896.

Thos. B. Harrison, Jr., Notary Public.

STATE OF KENTUCKY,

SCT.:

County of Jefferson.

Personally appeared before me, Thos. B. Harrisen, Jr., a Notary Public in and for the State and County aforesaid, S. R. Knott and J. H. Ellis, with whom I am personally acquainted, and who are known to me to be the First Vice-President and Secretary respectively of the Louisville & Nashville Railroad Company, the within named bargainor, and who acknowledged that they executed the within instrument for and on behalf of said Louisville & Nashville Railroad Company for the purposes therein contained. My commission expires July 10, 1896.

Witness my hand and seal this June 18, 1896.

Thos. B. Harrison, Jr., Notary Public.

STATE OF TENNESSEE,

County of Davidson.

Personally appeared before me Charles E. Currey, a Notary Public, duly appointed, commissioned, qualified, and acting in and for said county and State, J. W. Thomas and J. H. Ambrose, with whom I am personally acquainted, and whom I know to be the President and Secretary respectively of the Nashville, Chattanooga & St. Louis Railway, who acknowledged the execution of the foregoing instrument for the purpose therein contained.

Witness my hand and notarial seal of office at Nashville, Tenn., this 15th day of June, 1896.

CHARLES E. CURREY, Notary Public. EXHIBIT C FILED SUBSEQUENT TO HEARING BY WITNESS KEEBLE. MODIFICATION OF LEASE L. & N. TERMINAL COMPANY TO L. & N. RAILROAD COMPANY AND N., C. & ST. L. RAILWAY COMPANY, DATED JUNE 15, 1896.

THIS INDENTURE, made this, the third day of December, 1902, by and between the LOUISVILLE & NASHVILLE TERMINAL COMPANY, a corporation chartered, organized and existing under the laws of the State of Tennessee and known hereinafter as the first party, and the LOUISVILLE & NASHVILLE RAIL-ROAD COMPANY, a corporation, chartered, organized and existing under the laws of the Commonwealth of Kentucky, with a right of way granted by the State of Tennessee, to construct and operate a railroad in said State of Tennessee, and the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, a corporation, chartered, organized and existing under the laws of the State of Tennessee, said two last named railroad or railway companies being known hereinafter as the second parties, WIT-NESSETH:

THAT WHEREAS, the said first party and the said second parties heretofore, on the 15th day of June, 1896, entered into an indenture of lease, which is recorded in the Register's Office of Davidson County, Tennessee, in Book 222, page 175, by which the said first party did grant, demise and farm-let unto the said second parties, and their respective successors and assigns, in consideration of certain rental therein provided for, certain pieces or parcels of land situated in the City of Nashville, County of Davidson and State of Tennessee, and fully described in Article I of said indenture of lease, and did grant, sell, assign, transfer and set over, to said second parties, all its estate, right, title and interest in and to the property described in Article II of said indenture of lease, it being the same property granted and demised by the Nashville, Chattanooga & St. Louis Railway to the Louisville & Nashville Terminal Company, its successors and assigns, by an indenture of lease dated the 27th day of April, 1896, together with said lease itself; and did grant, sell, assign, transfer and set over, all its estate, right, title and interest in and to the property described in Article III of said indenture of lease, it being the same property granted and demised by the Louisville & Nashville Railroad Company, to the Louisville & Nashville Terminal Company, its successors and assigns, by an indenture of lease dated the 27th day of April, 1895, together with said lease itself;

AND WHEREAS, by an agreement between the Louisville & Nashville Terminal Company and the Nashville, Chattanooga & St. Louis Railway, of even date herewith, the aforesaid said indenture of lease between said parties, dated the 27th day of April, 1896, and all the provisions and conditions thereof, have been rescinded, cancelled, abrogated and for nothing held for the unexpired term of said lease, and by an agreement between the Louisville & Nashville Terminal Company and the Louisville & Nashville Railroad Company, of even date herewith, the aforesaid indenture of lease between said companies, dated the 27th day of April, 1896, and all the provisions and conditions thereof, have been reseinded, cancelled, abrogated and for nothing held for the unexpired term of said lease:

AND WHEREAS, the Louisville & Nashville Terminal Company has expended a large sum of money in constructing freight depots, side tracks, turnouts and other terminal facilities upon said parcels and tracts of land described in Article II and III of said indenture of lease,

dated the 15th day of June, 1896;

AND WHEREAS, it is the wish of the Louisville & Nashville Terminal Company, and of the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway, to amend, modify and alter certain other provisions and conditions, and to cancel and abrogate certain other provisions and conditions, of said indenture of lease, dated the 15th day of June, 1896;

NOW, THEREFORE, in consideration of the premises, and other considerations hereinafter to be set forth,

it is agreed as follows:

FIRST. All right, title and interest in and to the parcels or tracts of land described in Article II of said indenture of lease, dated the 15th day of June, 1896, which the Louisville & Nashville Terminal Company demised, trans rred and set over, under said lease, to the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, are hereby excluded from said lease for the unexpired term thereof it being understood and agreed that the right, title and interest of the Nashville, Chattanooga & St. Louis Railway, in and to the same, shall be and remain, as it was prior to the lease executed by it to the Louisville & Nashville Terminal Company, dated the 27th day of April, 1896, subject only to the right, title and interest of any trustee, or trustees, under any mortgage or mortgages executed by the Louisville & Nashville Terminal Company prior to the date of this instrument; said tracts or

parcels of land thus excluded for the unexpired term of said lease, dated the 15th day of June, 1896, are fully described in said Article II of said indenture of lease, which lease is recorded in the Register's Office of Davidson County, Tennessee, in Book 222, page 175, reference

to which is hereby made.

SECOND. All right, title and interest in and to the parcels or tracts of land described in Article III of said indenture of lease, dated the 15th day of June, 1896, which the Louisville & Nashville Terminal Company demised, transferred and set over, under said lease, to the Louisville & Nashville Railroad Company and the Nashville. Chattanooga & St. Louis Railway, are hereby excluded from said lease for the unexpired term thereof, it being understood and agreed that the right, title and interest of the Louisville & Nashville Railroad Company in and to the same shall be and remain, as it was prior to the lease executed by it to the Louisville & Nashville Terminal Company, dated the 27th day of April, 1896, subject only to the right, title and interest of any trustee, or trustees, under any mortgage or mortgages executed by the Louisville & Nashville Terminal Company prior to the date of this instrument; said tracts or parcels of land thus excluded for the unexpired term of said lease, dated the 15th day of June, 1896, are fully described in said Article III of said indenture of lease, which lease, is recorded in the Register's Office of Davidson County, Tennessee, in Book 222, page 175, et seq., reference to which is hereby made.

It is further distinctly understood and agreed Third. that said indenture of lease, dated June 15th, 1896, and all the terms and provisions thereof, shall be construed to relate only to the tracts or parcels of land described in Article I thereof, and that all the provisions of said lease which relate to the tracts or parcels of land described in Article II and III thereof, are hereby rescinded, abrogated and for nothing held, except as otherwise herein-

after provided.

FOURTH. It is further understood and agreed that Article I of said indenture of lease, dated June 15th, 1896, shall be amended, modified and altered, so as to make the term of said interest therein granted and demised, to expire at the end of Ninety-nine years from the first day of July, 1896.

FIFTH. It is further understood and agreed that Articles II, III, V, VI, VII, VIII, X, XI, XIII, XIV and XV, of said indenture of lease dated June 15th, 1896, are

hereby rescinded, abrogated and for nothing held from

and after the date hereof.

SIXTH. It is further understood and agreed that Article XII of said indenture of lease, dated June 15th, 1896, shall be modified, amended and changed to read as follows, to-wit: Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, that as rent for the premises or property, described in Article I of said indenture of lease, dated June 15th, 1896, and for rent for the improvements thereon, and for the purpose of reimbursing and making whole the said first party for the moneys expended by it in the improvements erected upon the parcels or tracts of land described in Article II and III of said indenture of lease, the said second parties, their respective successors and assigns, will pay the principal and interest of the bonds secured by the Fifty Year Four Per Cent. Gold First Mortgage for Three Millions Dollars (\$3,000,000), executed by the Louisville & Nashville Terminal Company to the Manhattan Trust Company, Trustee, of New York, on the first day of December, 1902, and will pay the same to the holders thereof as said interest and principal become due. And the said second parties further, for themselves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, to pay all taxes, rates, charges and assessments that may be levied or imposed, during the term aforesaid, on said premises or property, and on said improvements erected thereon.

And the said second parties do, for themselves, and their respective successors and assigns, further covenant with the said first party, its successors and assigns, that they will keep all of said improvements on said property in repair, and will insure the same for the full value thereof, in some reputable insurance company or companies, and as often as the property so insured shall be burned down or damaged by fire, such sum or sums of money which shall be recovered or received by said second parties, or their respective successors and assigns, for and in respect of said insurance, shall be laid out or expended by them in rebuilding or repairing such property so insured, or such parts thereof as shall be so

destroyed by fire.

SEVENTH. It is further understood and agreed that Article XVI of said lease, dated June 15th, 1896, shall be changed, amended and modified to read as follows, to-wit: Said second parties do hereby, for them-

selves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, that at the expiration of the term, or at an earlier termination, of this lease, said second parties, or their respective successors and assigns, shall and will, peaceably surrender and yield up to the said first party, its successors and assigns, the premises described in Article I, with

their appurtenances. EIGHTH. It is further understood and agreed that Article XVII of said indenture of lease, dated June 15th, 1896, shall be amended, modified and changed to read as follows, to-wit: Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, that in case of any breach or non-performance on the part of the said second parties, or their respective successors and assigns, of any of the covenants, provisos or conditions herein contained, or contained in said lease dated June 15th, 1896, which are not abrogated or cancelled by this instrument, it shall be lawful for said first party, its successors and assigns, at any time thereafter, into and upon the premises described in Article I of said lease, dated June 15th, 1896, or any part thereof, in the name of the whole, to re-enter and the same again repossess and enjoy, as of its or their former estate, anything hereinbefore contained to the contrary notwithstanding.

NINTH. It is further understood and agreed that all of the provisos and conditions contained in said indenture of lease, dated June 15th, 1896, which are not herein abrogated and cancelled, modified or altered, and which are not inconsistent with the provisions of this instrument, shall remain and continue in force for the unexpired term thereof.

IN WITNESS WHEREOF, the said parties hereto have caused these presents to be signed by their respective Presidents or Vice-Presidents, attested by their respective Secretaries or Assistant Secretaries, and their respective corporate seals to be hereunto affixed: cuted in triplicate originals the day and year first hereinbefore written.

LOUISVILLE & NASHVILLE TERMINAL COMPANY, By E. C. LEWIS, President.

[L. & N. T. Co., SEAL.]

Attest:

W. H. BRUCE, Assistant Secretary.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY,

[L. & N. R. R. Co., SEAL.]

Attest:

W. H. BRUCE, Assistant Secretary.

NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y,
By J. W. THOMAS, President.
Attest:

J. H. AMBROSE, Secretary.

STATE of TENNESSEE, County of Davidson.

Before me, E. B. DUVAL, a Notary Public in and for the State and County aforesaid, personally appeared E. C. Lewis, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of the Louisville & Nashville Terminal Company, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President, and that he further acknowledged that the seal thereto affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by W. H. Bruce, the Assistant Secretary of said Company.

Wtiness my hand and seal at office in Nashville, Ten-

nessee, this fifth day of December, 1902.

E. B. DUVAL, Notary Public.

STATE of KENTUCKY, County of Jefferson.

Before me, G. W. B. OLMSTEAD, a Notary Public in and for the State and County aforesaid, personally appeared Walker D. Hines, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the First Vice-President of the Louisville & Nashville Railroad Company, the within named bargainor, a corporation, and that he as such First Vice-President, being authorized to to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself, as First Vice-President, and that he further acknowledged that the seal thereto

affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by W. H. Bruce, the Assistant Secretary of said Company.

Witness my hand and seal at office in Louisville, Ken-

tucky, this 6th day of December, 1902.

G. W. B. OLMSTEAD, Notary Public.

STATE of TENNESSEE, County of Davidson.

Before me, E. B. DUVAL, a Notary Public in and for the State and County aforesaid, personally appeared J. W. Thomas, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of the Nashville, Chattanooga & St. Louis Railway, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President, and that he further acknowledged that the seal thereto affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by J. H. Ambrose, the Secretary of said Company.

Witness my hand and seal at office in Nashville, Ten-

nessee, this fifth day of December, 1902.

E. B. DUVAL, Notary Public.

STATE of TENNESSEE, County of Davidson.

Register's Office, December 24th, 1902.

I, BEN. F. LOFTIN, Register for said County, do certify that the foregoing instrument and certificate are registered in said office, in Book No. 272, page 407, that they were received Dec. 11, 1902, at 5 o'clock p. m., and were entered in Note Book 18, page 227.

BEN. F. LOFTIN,
Register of Davidson County.
By W. H. LINGNER, D. R.

STATEMENT OF LIST OF INDUSTRIES SERVED BY THE TENNES-SEE CENTRAL RAILROAD AT NASHVILLE, ENCLOSED WITH LETTER FROM S. W. FORDYCE, JR., TO THE SECRETARY OF THE COMMISSION, DATED OCTOBER 30, 1914.

RECAPITULATION

OF

Industries Served by the Tennessee Central R. R. Co.,

Nashville, Tennessee.

LOCATION.	Total Number of Concerns, regard- less of whether or not there is a common ownership	Total Number of Separate Concerns, that is, counting only one where there is a common
O- 71 C P P	of any of them.	ownership.
On T. C. R. R. exclusively	101	94
(Lists 1, 2, 3 and 4.) Served by independent tracks of T. C. R. R. and L. & NN., C. & St. L. terminals (List 5.)	32	39
Served by joint tracks of T. C. R. R. and L. & NN., C. & St. L. terminals (List 6.)	24	22
Nashville, Tenn., October 15, 1914	157	148
,		

LIST No. 1.

INDUSTRIES LOCATED ON TENNESSEE CENTRAL RAILROAD BASIN ALLEY TRACK, SOUTH OF BROAD STREET.

NAME OF INDUSTRY.	CHARACTER.
Doss Transfer Company	The contract ER.
Nichola & Shapard	Transfer and Storage
Nichols & Shepard.	Engines and Threshers
W. T. Hardison & Co	Builders Supplies
Wizard Products Co-	Sweeping Compound
Diantingnam Implement Co.	- Implements Du
Morenead & Young	II O :
(a) Nashville Feed Co-	Stock Feed
Tune & Wright	Stock Feed
Tune & Wright	- Poultry, Butter and Eggs
Ollie Alloway	Poultry, Butter and Eggs
(h) Werthan Bag & Burlap Co(h) Werthan & Co.	- Burlap Bags
Warren Paint & Color Co-	-Paint
National Biscuit Co-	-Crackers, etc.
Carbide Sales Co	Carbida
Meyer Roth	- Scrap Iron and Paper Stock
The Little Crutefier Co	How Canin and The a
Warren Bros	Glass Warehouse
(a)—Same firm operating	and an American
ounce mim operating	under two names.

 ⁽a)—Same firm operating under two names.
 (h)—Same firm operating under two names.
 †—Two locations.

LIST No. 2.

INDUSTRIES LOCATED ON TENNESSEE CENTRAL RAILROAD FRONT STREET TRACK, SOUTH OF UNION STREET.

NAME OF INDUSTRY.	CHARACTER.
B J. Fox	Bottles and Cooperage
B. J. Fox	e sources and cooperage
Co	Paner Hores
Geo Peard Belting Co	Rolling
Geo. Peard Belting Co	. Deiting
Co	Motel Stamps Tithesseller
00	
Hain Mahana Ca	etc.
eNashvilla Duillana Curala Ca (alaa	10bacco
Union Tobacco Co §Nashville Builders Supply Co. (also in Lists 4 and 6)	D.:111 0 1'
Distance Table 1	Builders Supplies
Diehl & Lord	Beverages
Brandon Printing Co	Printers and Stationers
Graham Paper Co(c) Alex Bennie & Co(c) Geo. E. Bennie & Co(c) Gralsbad Manufacturing Co(c) Carlsbad Manufacturing Co(c) Carlsbad Manufacturing Co(c) Carlsbad Manufacturing Co(c) Carlsbad Manufacturing Co(c) Co(Paper
c) Alex Bennie & Co	Notions
c) Geo. E. Bennie & Co.	Notions
c) Carlsbad Manufacturing Co	Notions
Spurlock-Neal Co §Phillips & Buttorff Mfg. Co. (also in List 5) Nashville Paper Stock Co.	Wholesale Drugs, etc.
§Phillips & Buttorff Mfg. Co. (also in	
List 5)	China, Tinware, etc.
Nashville Paper Stock Co	Paper Stock
Montgomery-Moore Mfg. Co	Harness and Saddlery
Orr, Jackson & Co	Wholesale Groceries
Berry, DeMoville & Co	Wholesale Drugs
Orr, Mizell & Murrey	Wholesale Groceries
J. H. Orr & Co	Wholesale Groceries
Nashville Paper Stock Co	Paper
The Riddle Co	Sash, Doors, Paints, etc.
Britt & Roberts McKay & Morgan b) National Anilene Chemical Co b) Crown Laundry Supply Co	Wholesale Produce
McKay & Morgan	Merchandise Brokers
b) National Anilene Chemical Co	Laundry Supplies
b) Crown Laundry Supply Co	Laundry Supplies
Webb Mfg. Co	Extracts
J. A. Crutchfield & Co.	Implements. Hardware and
	Soods
Deeds & Jordan Buggy Co	Vehicles
Green Matthews & Co	Implements
Deeds & Jordan Buggy Co	Wholesale Groceries
W. A. Case & Son Mfg. Co.	Plumbers and Mill Sumilian
W. T. Henderson & Co	Merchandise Brokers
Follanshee Brothers	Tin Plata
Follansbee Brothers Hooper Grocery Co Smith, Herrin & Baird Mfg. Co	Wholesale Greening
Smith Herrin & Baird Mfg Co	Stoves Tinware and Furnish
omita, merria de Danie Mig. Co	ings
†H. G. Lipscomb & Co. (also in List 1)	Wholesale Handwore
Chas. Nelson	Wholesale Lieues
Cumberland Seed Co	Sood Liquors
L. H. Hitchcock & Son	Implements II1
Wallaw Dance & Ca	Seed
McKay-Reece & Co	Whalasala Day Carda 6 Ct
Conthorn Woodenware Co	wholesale Dry Goods & Shoes
Panadan Buggar Ca	Woodenware, etc.
Dearden Buggy Co	Venicles
(b)-Same firm operating t	
(c)-Same firm operating	under three names.
t-Two locations.	
8-Three locations	

-Three locations.

LIST No. 3.

INDUSTRIES LOCATED EXLUSIVELY ON TENNESSEE CENTRAL R. R.

HARRISON STREET LINE, HAMILTON STREET LINE

AND

NORTH OF CENTRAL JUNCTION.

(A)	Harrison Street Line East of Cumber	land Street Station.	
	NAME OF INDUSTRY.	CHARACTER.	
weyn	nan-Bruton Company (also in		

List	an-Bruton	Company	(also	in		
					obacco Warehouse eel Factory	
vakes	roundry	Co		C	astings	
					berland Street Station ay, Grain and Feed	1:
	o Cumin	uguam		11	arehouse (storage)	

Perry, Lester & Co. (Stock Yards) --- Live Stock
†Keith, Simmons & Co. (also in List 5) -- Fire Works, Warehouse
O'Bryan Bros --- Overalls
Weatherly, Armistead McKennie & Co. Wholesale Dry Goods
Magnesite Products Co --- Magnesite Products

†—Two locations.

(g)—Under contract between the Tennessee Central R. R. Co. and L. & N. Terminal Co. the latter have authority to use the tracks of the T. C. R. R. Co. only for switching of traffic to and from the State Penitentiary (West Nashville) and Carter Shoe Co. (East Nashville)

(f)-Same firm operating under two names.

LIST No. 4.

INDUSTRIES LOCATED EXCLUSIVELY ON TENNESSEE CENTRAL R. R. OTHER THAN SHOWN IN LISTS Nos. 1, 2 AND 3.

11. 21515 Nos. 1, 2 AND 3.	
NAME OF INDUSTRY. City Rock Crushing PlantCrushed Stone Lieberman, Loveman & O'BrienRiver Saw Mill and Lumber Yard Price-Bass Company (also in List 1)Storage Warehouse Tankard & WoodallCoal and Ice Fulcher Brick CoBrick Perry & Lester Coal CoShashville Builders Supply Co. (cless farm	
in Lists 2 and 6) Sand and Gravel Yard Bonner Furniture Mfg. Co. Furniture T. J. Osborne & Co. Coal Star Block Mills Shuttle Blocks Island Block Mills Vehicle Material	

568 CITY OF NASHVILLE, ET AL., V. L. & N. R. R. CO., ET AL.

Independence Snuff Co	Gasoline and Oil Tobacco Warehouse Egg Case Fillers and C Gasoline and Oil Gasoline and Oil	ases
†—Two locations.	Gasonile and On	

(d)-Same firm operating under two names.

LIST No. 5.

INDUSTRIES SERVED BY INDEPENDENT TRACKS

TENNESSEE CENTRAL RAILROAD COMPANY AND

L. & N.—N., C. & ST. L. TERMINALS.

NAME OF INDUSTRY.	CHARACTER.
State Fair Grounds (Cumberland Park).	
Smith, Dies & Alexander	Cedar Posts and Cedar Lumber
Silber Lumber Co	_ Lumber
I. F. McLean Mfg. Co	Staves and Heading
Foster-Creighton-Gould Co	Contractors Supply Yard
Gray & Dudley Hdwe. Co	_Stoves, Implements and Hard-
	ware
Jno. B. Ransom & Co	-Lumber and Boxes
Jamison Spring Mattress Co.	_ Mattresses
Union Stock Yards (Bostick Street	*!
Pens)	- Live Stock
Independent Ice Co.	_Coal and Ice
§Phillips & Buttorff Mfg. Co. (also in	
List 2) §Phillips & Buttorff Mfg. Co. (also in	Stoves and Hollowware
List 2)	Dig Ten and Sand
Standard Oil Co	Casoline and Oil
John Bouchard & Sons Co	Lee Machines and Foundam
Ford Flour Co.	Floor
Naive-Spillers Co	Eggs and Poultry
Booth Fisheries Co	Figh
Buford Bros	Vehicle Hardware
International Harvester Co	Implements
City Grain & Feed Co	Hay, Grain and Feed
Cherokee Mills	Flour
American Bread Co	Flour
Southern Ice Co. (Howe Plant)	Lee, Coal and Cold Storage
†Keith, Simmons & Co. (also in List 3)	Hardware
T. L. Herbert & Sons Co.	Builders Supplies
Columbia Grain Co.	Grain
Greenwood Mill & Elevator Co	Flour
Nashville Abattoir, Hide & Melting	
Ass'n Nashville Spoke & Handle Co	_Live Stock, Hides, Wool, etc
Nashville Spoke & Handle Co	_ Handles
N. E. Leming.	Pole Yard
Ewing & Gilliland.	Lumber
Joyce-Watkins Co	. Cross-ties
Baker, Jacobs & Co	_ Lumber
Dunian Lumber Co	_ Lumber
†Nashville Gas & Heating Co. (also in	4
List 6)	_Coal

-Two locations. -Three locations.

LIST No. 6.

INDUSTRIES LOCATED ON TRACKS OPERATED JOINTLY

BY THE

TENNESSEE CENTRAL RAILROAD COMPANY

AND

L. & N.—N., C. & ST. L. TERMINALS.

NAME OF INDUSTRY.	CHARACTER.
Harley Pottery Co.	DARACTER.
Harley Pottery CoLightman-Sewell Stone & Pulverizing	Pottery
Co	Canabad St.
Barrett Manufacturing Co	Roofing Come
	Material Pavil
Nashville Gas & Heating Co. (also in	Material
	- Coke Track
Nashville Railway & Light Co	Power House
liams, Agent)	_Beer
liams, Agent) II. F. Cooper & Co. SNashville Builders Swarls Co. (class)	Builders Supplies
in Lists 2 and 4)Cumberland Telephone & Telegraph	Builders Supplies
Cumperland Telephone & Telegraph	
Western Electric Co. Jones & Hopking Mfg Co.	Electrical Supplies
(e) Atlan Point Co.	Stoves, Tinware, etc.
(e) Convolidated Co-	Paint
Jones & Hopkins Mfg. Co(e) Atlas Paint Co. (e) Consolidated Gas Purification & Chemical Co.	
Chemical Co Weyman-Bruton Co. (Miller Ware-	Gas Purifying Material
house) (also in List 3)	T-L-
Jos. Scheffer Lumber Co	Tobacco
washville Roller Mills	Flour
o. w. Refr & Co	Caria
o. o. Nerr	Canin
Logan & Company	Carin a ser
W. R. Tate	Grain and Haw
	Paper, Sheeting and Bear
Grantland Cotton Co.	Grain, Flour and Meal
Sulzhorger & Co.	Cotton
Strateger at Sons Co.	Packing house Draducts
Same firm operating up	der two names
§—Three locations.	
(k)—Same firm operating u	nder two names.

INDEX OF EXHIBITS FILED SUBSEQUENT TO THE HEARING.

A. Contract between L. & N. and N., C. & St. L., dated Ma	PAGE NO. y 1,
B. Contract between Mayor and City Council of Nashville an & N. Terminal Company, dated June 21, 1898	d L.
C. Modification of lease, L. & N. Terminal Co. to L. & N. I road Company and N., C. & St. L. Railway, dated June 1896	15,
D. Act of incorporation and by-laws of L. & N. Terminal Co	
E. Contract of lease, dated April 27, 1896, between N., C. & St Railway, L. & N. Terminal Co., and L. & N. Railroad C pany	. L.
F. Statement of facts concerning the mortgage of the L. & N. minal Company	
Unnumbered exhibit attached in Commission's docket with other hibits—lease dated June 15, 1896, L. & N. Terminal Compan. L. & N. Railroad Co., and N., C. & St. L. Railway	ex- v to
List of industries served by the Tennessee Central Railroad at No	
ville, enclosed with letter from S. W. Fordyce, Jr., to the Se tary, dated October 30, 1914	ere-
Statement of J. H. Ellis, Secretary of L. & N. Railroad Co., da November 2, 1914, concerning L. & N. Railroad Company's st ownership in N., C. & St. L. Railway, filed with Mr. Joue letter to Commissioner Meyer, dated November 2, 1914	ited ock tt's
Carbon copy of letter from E. S. Jouett to T. M. Henderson da November 2, 1914, which was enclosed with above-mentio letter to Commissioner Meyer, dated November 2, 1914	nted ned
Statement of mileage of L. & N. and N., C. & St. L. at Nashvienclosed with Mr. Jouett's letter to Commissioner Meyer, da November 9, 1914	ille, ted
Statement of acquisition and present holdings of L. & N. Railr Company in N., C. & St. L. Railway, enclosed with Mr. Jones	oad tt's
letter to Commissioner Meyer, dated November 19, 1914	522
Letter dated November 5, 1914, from Charles Barham to R. Wal Moore, showing result of joint check of statement of industry on Tennessee Central and Nashville Terminal tracks, and vised list of industries, as prepared by Mr. Barham, filed w Mr. Moore's letter to Commissioner Meyer, dated Novem	ries re- rith ber
9, 1914	511

EXHIBIT F.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

No. 6484.

CITY OF NASHVILLE, ET AL., versus

LOUISVILLE & NASHVILLE RAILROAD CO., ET AL.

Submitted October 22, 1914; Decided February 1, 1915.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

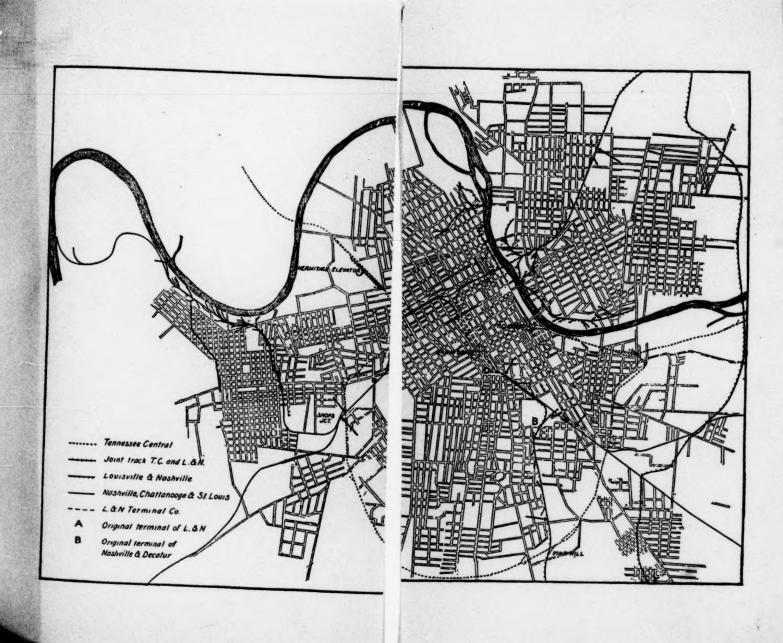
This case concerns the switching practices and charges at Nashville, Tenn. The complainants are the city of Nashville and the Traffic Bureau of Nashville. The Traffic Bureau of Nashville is a Tennessee corporation organized to promote and protect the commercial interests of Nashville and represents practically all of the large receivers and shippers of freight in Nashville. It is not organized for profit. The Business Men's Association of Nashville, a voluntary association of similar character, has intervened and joins in the complaint.

Nashville is served by three railroads: The Louisville & Nashville; the Nashville, Chattanooga & St. Louis; and the Tennessee Central. The Louisville & Nashville reaches Nashville from the north, from Cincinnati, Louisville, and St. Louis, and extends from Nashville south to Birmingham, Ala., and other southern points. The Nashville, Chattanooga & St. Louis enters the city from the west, from Hollow Rock, Tenn., where its lines from its three western termini at Hickman and Paducah, Ky., and Memphis, Tenn., converge, and extends through the city southeast to Chattanooga, Tenn., and other points. The Tennessee Central enters from the northwest, from Hopkinsville, Ky., where it connects with the Illinois Central, and extends through the city east to Harriman,

Tenn., where it connects with the Southern Railway. The Louisville & Nashville and Nashville, Chattanooga & St. Louis are natural competitors for Nashville traffic. and both lines compete for Nashville traffic with the Tennessee Central. All three have extensive terminal facilities within the city, including freight depots, yards, and main, side, team, and spur tracks. The Louisville & Nashville tracks reach industries located principally in the northern, eastern, and southern sections of the city; those of the Nashville, Chattanooga & St. Louis, industries in the southern, central, and western sections; while the Tennessee Central tracks reach industries located principally in the northern, southern, and southeastern sections. The tracks of the Tennessee Central are connected with the tracks of the Nashville, Chattanooga & St. Louis by an interchange track at Shops Junction, in the western section of the city, and with the tracks of the Louisville & Nashville by an interchange track at Vine Hill, just outside of the city on the south. The tracks of the Louisville & Nashville and Nashville, Chattanooga & St. Louis are connected at several points, but principally in the yards of the Louisville & Nashville Terminal Company, in the center of the city. The situation is illustrated by the accompanying map.

The Louisville & Nashville Terminal Company, hereinafter called the "terminal company," is best described by a brief account of its origin and development. Prior to 1872 the Louisville & Nashville line into Nashville from the north terminated at a point in the northern section of the city on the west bank of the Cumberland River. The Louisville & Nashville line from the south. the Nashville & Decatur Railroad, terminated at a point several miles south of the terminus of the northern line. Separate terminals were maintained at the two points. and the Louisville & Nashville had no tracks of its own within the city connecting them. The only other lines into Nashville at that time were the Nashville & Chattanooga from the southeast and the Nashville & Northwestern, owned by the Nashville & Chattanooga, from the west, which terminated about midway bewteen the termini of the two Louisville & Nashville lines. Louisville & Nashville's northern line connected with the Nashville & Northwestern at a point approximately 1 mile north of the terminus of the latter, and the Nashville &







Decatur connected with the Nashville & Chattanooga near the terminus of the Nashville & Decatur. On May 1, 1872, the Nashville & Chattanooga, for an agreed annual rental, accorded to the Louisville & Nashville a perpetual right to run its trains and locomotives over a track to be constructed for the Nashville & Chattanooga by the Louisville & Nashville from the trestle then connecting the Louisville & Nashville's northern line with the Nashville & Northwestern to the depot grounds of the Nashville & Chattanooga; thence over the tracks of the Nashville & Chattanooga through said depot grounds; thence over a track to be constructed by the Louisville & Nashville as its own property from the southern approach to the Nashville & Chattanooga depot grounds to the depot of the Nashville & Decatur, alongside of the existing track of the Nashville & Chattanooga, the necessary right of way to be furnished by the Nashville & Chattanooga. It was also agreed that the Louisville & Nashville would contribute \$50,000 toward the construction of a union passenger station on the depot grounds of the Nashville & Chattanooga whenever the Nashville & Chattanooga should contribute an equal amount for the same purpose. The tracks provided for in the agreement were constructed immediately, but not the union passenger station. In 1873 the name of the Nashville & Chattanooga was changed to Nashville, Chattanooga & St. Louis. In 1893 and to facilitate the construction of a union passenger station as tentatively proposed in the agreement of 1872, the Louisville & Nashville and Nashville, Chattanooga & St. Louis organized the terminal company. The general incorporation laws of Tennessee were amended March 17, 1893, to authorize the organization of railway terminal corporations, Laws of Tennessee, 1892, ch. 11, p. 15; and on March 23, 1893, the terminal company was incorporated under them. Following its organization the terminal company existed in name only until April 27, 1896, when the Louisville & Nashville and Nashville, Chattanooga & St. Louis leased to it for a period of 999 years all of its property and railroad appurtenances thereon which the lessors severally owned or controlled within, or in the immediate vicinity of, the original depot grounds of the Nashville & Chattanooga. The terminal company covenanted to construct upon the premises demised and other premises to be used in connection there-

with all passenger and freight buildings, tracks, and other terminal facilities suitable and necessary for all railroads centering at Nashville that might contract with the terminal company therefor. Shortly thereafter, June 15, 1896, the terminal company leased back to the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly all property acquired by the terminal company under the lease of April 27, 1896, together with all other property which the terminal company has subsequently acquired or which it might acquire. Both the charter of the terminal company and the act under which it was incorporated authorized the terminal company to lease its property and terminal facilities to any railroad company utilizing them upon such terms and for such time as might be agreed upon by the parties. Meanwhile the people of Nashville had become desirous of better terminal facilities, particularly of a union passenger depot, and an ordinance authorizing a contract to that end between the city and the terminal company had been proposed, but with the proviso that the facilities proposed should also be available on an equitable basis to railroads which might be built in the future. The Louisville & Nashville and Nashville, Chattanooga & St. Louis opposed this proviso and an ordinance omitting it was passed, but was vetoed by the mayor on account of the omission. Nothing more was done until June 21, 1898, when the terminal company entered into an agreement with the city of Nashville whereby the terminal company agreed to construct a union passenger station on the premises covered by the leases of April 27 and June 15. 1896, at least two freight stations, platforms, tracks, switches, etc., certain viaducts over its tracks, and certain new streets and extensions of existing streets. The city agreed to secure the condemnation of land, to close certain existing streets, and to erect approaches to certain of the viaducts to be constructed by the terminal company. No provision was made for future railroads. The improvements agreed upon were duly made at a cost of approximately \$100,000 to the city and of several million dollars par value of bonds to the terminal company, which bonds were guaranteed by the Louisville & Nashville and Nashville, Chattanooga & St. Louis as authorized by the terminal company's charter, and were used to repay funds advanced by the guaranters to the terminal com-

pany and expended by the latter for the construction of the facilities which it had undertaken to construct. Pursuant to this agreement the terminal company constructed a union passenger station, two adjoining freight depots, a roundhouse, some coal chutes, and adjoining yard tracks. The tracks constructed are connected with the tracks of the Louisville & Nashville and of the Nashville, Chattanooga & St. Louis, but not with the tracks of the Tennessee Central. On December 3, 1902, the lease of June 15, 1896, from the terminal company to the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly was modified and in part rescinded. The duration of the lease was reduced from 999 to 99 years, its monetary considerations were modified, and the lessees were reinvested in severalty with their original titles to all the property leased by them to the terminal company April 27, 1896, except for the intervening lien of the first mortgage for \$3,000,000 which had been given to secure the terminal company's bonds.

The Louisville & Nashville owns all of the capital stock of the terminal company and 71.776 per cent of the outstanding capital stock of the Nashville, Chattanooga &

St. Louis, which it began to acquire in 1880.

Prior to August 15, 1900, the Louisville & Nashville and Nashville, Chattanooga & St. Louis operated their respective terminals independently. Each road switched for the other at a charge of \$2 per car, but on competitive traffic the switching charge was absorbed. Since August 15, 1900, all of their terminal facilities, including the terminal buildings, tracks, and other facilities leased by them jointly from the terminal company, except their individual team tracks and separate freight depots, have been maintained and operated jointly. The arrangement is called the "Nashville terminals" and is managed by a board of three, composed of the general managers of the two roads and a superintendent of terminals. The total expense of maintenance and operation is apportioned monthly between the two roads on the basis of the total number of cars and locomotives of all kinds handled for each. The association is not incorporated and is not a terminal company in the sense that the principal purpose of its existence is "to furnish terminal facilities for carriers which lack them." It is a joint agency voluntarily constituted by the Louisville & Nashville and Nashville, Chattanooga & St. Louis for the joint maintenance and operation of their own facilities for their own use. The terminal tariffs of both roads publish service by the Nashville terminals and provide that "there is no switching charge to or from locations on tracks of the Nashville terminals, within the switching limits, on freight traffic, carloads, from or destined to Nasshville" over either road, "regardless of whether such traffic is from or destined to competitive or noncompetitive points."

The Tennessee Central entered Nashville 1901-2 after strong opposition from the Louisville & Nashville, and leases its terminal facilities, consisting of a passenger station, freight depots, shops, main, side, and spur tracks. from the Nashville Terminal Company, a Tennessee railroad terminal corporation organized August 12, 1893, and

empowered to lease its property to any railroad.

Prior to 1907 neither the Louisville & Nashville nor the Nashville, Chattanooga & St. Louis would interchange traffic with the Tennessee Central at Nashville or at any other point of connection. During 1907 both roads began to interchange with the Tennessee Central all noncompetitive traffic, except coal traffic, at a charge of \$3 per car. Noncompetitive traffic is defined as traffic between Nashville and points served by only one railroad into Nashville or points served by two or more railroads into Nashville, for which, however, one road can maintain rates which the others can not meet. The interchange is effected at Shops Junction.

On December 9, 1913, upon complaint by the city of Nashville, the Traffic Bureau of Nashville, and others, this Commission found that the Louisville & Nashville and Nashville, Chattanooga & St. Louis switched all traffic for each other at Nashville, but refused to switch coal from the Tennessee Central, except at the prohibitive rate of 60 cents per ton. No differentiating conditions were found, and it was decided that the Louisville & Nashville and Nashville, Chattanooga & St. Louis unjustly discriminated against coal from the Tennessee Central in favor of coal from each other's lines. The refusal of the Tennessee Central to switch coal from the Louisville & Nashville and Nashville, Chattanooga & St. Louis was found to be a purely retaliatory measure. Traffic Bureau of Nashville, Tenn. v. L. & N. R. R. Co., 28 I. C. C. 533, affirmed in L. & N. R. R. Co. v. United States, 216 Fed.

672. An order was entered requiring the Louisville & Nashville and Nashville, Chattanooga & St. Louis to "abstain from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., than they contemporaneously maintain with respect to similar shipments of coal from and to their respective tracks." The carriers have construed this order to relate exclusively to noncompetitive coal and have responded by switching noncompetitive coal from the Tennessee Central at a charge of \$3 per car, the same as all other noncompetitive traffic, but without changing their former practice relative to competitive coal.

The Louisville & Nashville will switch competitive coal and other competitive traffic to and from the Tennessee Central, but only at the local rates between Nashville and Overton, Tenn., which are the rates between Nashville and Vine Hill, by intermediate application. The interchange is usually effected, however, at Shops Junction and over the rails of the Nashville, Chattanooga & St. Louis. Until January 25, 1914, the Nashville, Chattanooga & St. Louis would perform the same service at the local rates between Nashville and Shops Junction. From December 14, 1913, to January 25, 1914, just after the complaint in this case was filed, however, these rates were published in the Nashville, Chattanooga & St. Louis terminal tariff with an express provision that they would apply on competitive traffic from or destined to the Tennessee Central. Since January 25, 1914, the terminal tariffs of the Nashville, Chattanooga & St. Louis have provided that competitive traffic will not be switched to and from the Tennessee Central, and no rates between Nashville and Shops Junction have been published except that the local rates between Nashville and Harding, the first station west of Shops Junction, apply intermediately. The terminal tariff of the Tennessee Central provides that Louisville & Nashville and Nashville, Chattanooga & St. Louis competitive traffic will be switched to and from Shops Junction at the Tennessee Central's local rates between Nashville and Shops Junction.

The rates applied to this switching by the Louisville & Nashville total from \$12 to \$36 per car; the Nashville, Chattanooga & St. Louis rates, from \$7 to \$36 per car;

the rates of the Tennessee Central, from \$5 to \$36 per car. These rates are virtually prohibitive. The Tennessee Central favors their reduction, but will not reduce its rates until the Louisville & Nashville and Nashville, Chattanooga & St. Louis shall agree to reduce theirs, which they refuse to do.

Complainants ask that the Louisville & Nashville and Nashville, Chattanooga & St. Louis may be required to interchange with the Tennessee Central all traffic to and from the industries on their respective lines at Nashville at a uniform charge not to exceed \$2 per car, and that the Tennessee Central may be required to reciprocate.

The Tennessee Central insists that \$3 per car is not an unreasonable switching charge for noncompetitive traffic, but makes no attempt to justify its charges on competitive traffic, and no brief has been filed on its behalf. The Louisville & Nashville and Nashville, Chattanooga & St. Louis, however, hereinafter called defendants, contest the petition in its entirety. The two kinds of traffic will be considered in order.

The only evidence that the present charge of \$3 per car on noncompetitive traffic is intrinsically unreasonable, as complainants allege, is that lower charges, usually \$2 per car, are imposed at many other points. This is not enough, for it is well understood that switching conditions are seldom the same at different points. There is some evidence that the conditions at Nashville are not altogether unlike the conditions at some points where lower charges are imposed, but not enough to justify a finding that the conditions are substantially the same. Defendants, moreover, insist that the actual cost to the Nashville terminals of handling city freight traffic at Nashville is not less than \$4.13 per car, exclusive of fixed charges, as shown in the following table introduced as an exhibit:

	Charged to passenger traffic.	Charged to through and city traffic	city traffic	through
Maintenance of way and structures	*16,459.16	A 05 000 00		
Maintenance of equipment	7,020.12			
Transportation expenses	58,949.19			\$ 17,342.01
General expenses	4,191.38	325,364.76 26,387.00		12,240.18
Total Distribution of through and city traffic: Charged to handling city traffic, 78.34 per	\$86,619.85	\$46 8,647.72		
Charged to handling through traffic, 21.66 per cent			367,138.63	
per cent				101,509.09
Total			\$396,156.54	\$131,091.28
Average cost per car.			95,958 \$4.128	103,322 \$1.269

Defendants assert that in making this estimate items definitely attributable to a particular kind of traffic were charged to that traffic, and that all other items were prorated on the basis of the relative number of hours of service of the yard crews assigned to each kind of traffic. Complainants attack the bases of apportionment used and object to the "general expense" block on the ground that it is a mere estimate based on the relation of general to total operating expenses shown in the accounts of 16 unnamed terminal companies. The objections made, however, and the analyses on which they are based are unconvincing and fail to show that defendants' figures are not substantially correct, even though they may not be absolutely correct. We are of the opinion, therefore, that a charge of \$3 per car for switching Tennessee Central noncompetitive traffic is not shown to be unreasonably high.

Complainants contend that at Birmingham, Ala., Atlanta, Ga., New Orleans, La., and Memphis, Tenn., the charges imposed are less than the cost of the service performed and that charges equal to the cost of the service at Nashville accordingly discriminate against Nashville, but we find no evidence to substantiate this contention.

The cost to the Nashville terminals of switching competitive Tennessee Central traffic is the same as the cost of switching noncompetitive traffic. Defendants urge against a uniform charge, however, that the two kinds

of traffic are essentially different in that the interchange of competitive traffic may result in the loss of line hauls. whereas the interchange of noncompetitive traffic can not result in loss but may result in gain by enabling the industries accommodated to increase the volume of their business. The interchange of competitive traffic involves short hauling and for that reason, defendants insist, can not be compelled. Complainants reply that defendants interchange both kinds of traffic on the same terms with each other at Nashville, and at other points, notably Memphis, with other carriers also, so that their refusal to do so for the Tennessee Central at Nashville unlawfully discriminates against the Tennessee Central competitive traffic and against Nashville, in contravention of section 3 of the act. Defendants rejoin that conditions are different at such other points, and, contending that they have merely exchanged trackage rights to and from industries on their respective lines at Nashville, insist that each road, through the Nashville terminals as its agent, does all of its own switching at Nashville, and that neither road does any switching for the other.

We think complainants' contentions well founded. Defendants unquestionably interchange traffic with each other and without distinction between competitive and noncompetitive traffic. The cars of both roads are moved over the individually owned terminal tracks of the other to and from industries on the other, and both lines are rendered equally available to industries located exclusively on one. The movement, it is true, is not performed immediately by the road over whose terminal tracks it is performed, but neither is it performed immediately by the road whose cars are moved. It is performed by a joint agent for both roads, and that being so, we are of the opinion that the arrangement is essentially the same as a reciprocal switching arrangement and accordingly constitutes a facility for the interchange of traffic between, and for receiving, forwarding, and delivering property to and from defendants' respective lines, within the meaning of the second paragraph of section 3 of the act. The joint maintenance and operation of the tracks utilized in a sense constitutes the terminal tracks of each road the tracks of the other, but inasmuch as both roads contribute nearly the same track mileage and defray the joint expenses in proportion to the number of cars handled for each the arrangement can not differ materially in ultimate consequences from an arrangement whereby each road performs all switching over its own tracks and interswitches traffic with the other. The Louisville & Nashville contributes 8.10 miles of main and 23.80 miles of side tracks; the Nashville, Chattanooga & St. Louis, 12.15 miles of main and 26.37 miles of side tracks. We can not agree with defendants' contention that they have merely exchanged trackage rights. But even if they have, we think the term "facility," as used in section 3 of the act, also includes reciprocal trackage rights over terminal tracks, the consequences and advantages to shippers being identical with those accruing from reciprocal switching arrangements.

The conclusion reached accords with the conclusion expressed in Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co., supra, which case defendants have interpreted too narrowly. Although that case related exclusively to coal traffic, the decision and order related to competitive as well as noncompetitive coal. The history of defendants' terminal arrangements at Nashville is given in greater detail in this than in the former record, but discloses nothing to change our former conclusion.

Since defendants interchange traffic with each other they can not refuse to interchange traffic upon substantially the same terms with the Tennessee Central, provided the circumstances and conditions are substantially the same, and defendants are not required "to give the use of their tracks or terminal facilities" to the Tennessee Central within the meaning of the concluding proviso of section 3. St. L., S. & P. R. R. Co. v. P. & P. U. R'y Co., 26 I. C. C. 226; Waverly Oil Works Co. v. P. R. R. Co., 28 I. C. C. 621; Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co., 28 I. C. C. 533, affirmed in L. & N. R. R. Co. v. United States, 216 Fed. 672; B., R. & P. R'y Co. v. Pa. Co., 29 I. C. C. 114, affirmed in Pa. Co. v. United States, 214 Fed. 445; Switching at Galesburg, Ill., 31 I. C. Defendants insist upon the further limitation that they can not be compelled to "short haul" their own lines in favor of the Tennessee Central, but we can not agree with this contention. Section 1 of the act requires carriers by railroad to establish through routes and to interchange cars with connecting carriers. Through routes and the interchange of cars are thus expressly in-

cluded among the facilities for the interchange of traffic which the second paragraph of section 3 in turn requires carriers to afford to all connecting carriers equally and without discrimination in rates and charges. Section 15 empowers the Commission to establish through routes over connecting lines whenever the carriers themselves refuse or neglect to establish them voluntarily. It is true section 15 also provides that in establishing such through routes the Commission shall not "require any company. without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be esablished." This provision, however, relates exclusively to the power of the Commission to establish through routes, and, since orders against discrimination by carriers between their connections in the matter of through routes are enforceable without the established of through routes by the Commission, does not apply to the provisions of section 3 either expressly or by necessary implication. Defendants short haul their respective lines in favor of each other, and in our opinion can not under the act as now amended refuse to interchange traffic with the Tennessee Central solely on the ground that they would thereby short haul their own fines. Defendants also insist that the ownership of 71 per cent of the capital stock of the Nashville, Chattanooga & St. Louis by the Louisville & Nashville consticutes them a single line and entitles them to accord each other more favorable treatment than they accord to other lines. This contention was repudiated in Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co., supra.

We do not find that the conditions of interchange of traffic between defendants' lines and the Tennessee Central differ substantially from the conditions of interchange between defendants' lines. Defendants assert that Tennessee Central cars delivered over their rails by the Nashville terminals normally return empty, whereas their own cars normally return loaded, except coal cars, and that coal cars occasionally return loaded with brick, stone, lumber, etc. No figures are given, however, nor

is it clear that the difference in the return movement, if any, is not directly attributable to the interchange by defendants of competitive as well as noncompetitive traffic or possibly to the indiscriminate use of each other's cars. Tennessee Central cars can be placed at industries on defendants' rails west of Shops Junction in the same number of switching movements as defendants' cars. Tennessee Central cars necessitate an extra stop of defendants' switching trains at Shops Junction, but are handled at that point more easily than defendants' cars are handled in the yards of the terminal company, defendants' primary classification yard. They are also hauled a shorter distance than defendants' cars. One more switching movement is required to place Tennessee Central cars at industries on defendants' rails east of Shops Junction than defendants' cars require-a movement from Shops Junction to the terminal company's yards. But since defendants' switching trains plying between the terminal company's yards and West Nashville all pass Shops Junction, the extra movement of Tennessee Central cars between Shops Junction and the yards of the terminal company can not cause much extra expense, and since noncompetitive Tennessee Central traffic is switched, such extra expense, if any, is evidently considered negligible by defendants themselves. cost to defendants of switching competitive Tennessee Central traffic is the same as the cost of switching noncompetitive traffic. None of these conditions relative to switching Tennessee Central traffic, moreover, appears to differ materially from the conditions of interchange between defendants' lines prior to the creation of the Nashville terminals, which conditions were improved only at the very considerable expense incurred by defendants through the building operations of the terminal company.

Defendants contend that the interchange of competitive traffic with the Tennessee Central would not be mutually advantageous. In support of this contention they show that there are approximately 240 industries located exclusively on their rails, equipped with sidings that will accommodate approximately 2,350 cars, as compared with 100 industries equipped with sidings accommodating not over 700 cars located exclusively on the rails of the Tennessee Central, and that during the six

months ending January 31, 1914, defendants delivered to the Tennessee Central for placement at Tennessee Central industries 245 loaded cars and 196 cars for transportation as compared with 952 cars received by defendants from the Tennessee Central for placement by the Nashville terminals and 104 cars received for transportation. These figures furnish some evidence that defendants together potentially control more traffic to and from Nashville than the Tennessee Central potentially controls and that defendants together may lose more competitive traffic through reciprocal switching than they will gain, although the figures given relative to the number of cars actually interchanged apparently relate exclusively to noncompetitive traffic. These comparisons, however, are irrelevant. Only the effect of reciprocal switching on defendants' lines individually is relevant, and as to this the record is silent. Neither is there any evidence that the interchange of traffic between defendants' lines is mutually advantageous. If not mutually advantageous one line at least can not urge lack of mutual advantage against reciprocal switching with the Tennessee Central. If the Nashville, Chattanooga & St. Louis, for example, is willing to interchange traffic with the Louisville & Nashville, even though it loses more traffic than it gains, it is not in a position to refuse to interchange traffic with the Tennessee Central solely on the ground that more traffic will be lost than gained. Defendants assert that the industries served by them through the Nashville terminals are about equally divided between their respective This does not prove, however, that the volume of traffic to and from the two groups of industries is the same or that the interchange of traffic between the two lines is mutually advantageous. General assertions are insufficient, moreover, to prove that reciprocal switching arrangements are mutually advantageous. More definite evidence should be given, preferably figures showing the precise amount of traffic surrendered or gained by each road participating in the arrangement. Switching at Galesburg, Ill., supra.

The Louisville & Nashville interswitches competitive and noncompetitive traffic on the same terms with other carriers at several other points, notably Memphis, Tenn., and Birmingham, Ala., while the Nashville, Chattanooga & St. Louis admittedly interswitches both kinds of traffic

at the same rates with all connections at all points of connection with other carriers, except Nashville and Lebanon, Tenn., where it connects with the Tennessee Central. Since November 14, 1914, a switching charge of \$2 per car for both kinds of traffic has been in effect at Lebanon. We do not find any substantial evidence that the conditions peculiar to the interchange of competitive traffic at such other points are substantially unlike the conditions at Nashville or that the interchange is mutually advantageous at such other points. Under these circumstances we think the almost unique policy pursued at Nashville requires more to justify it than has been shown.

The only use of defendants' "tracks or terminal facilities" asked by complainants for the Tennessee Central is the use incidental to the movement of Tennessee Central cars by defendants to and from industries on defendants' tracks. No use by Tennessee Central trains is asked, nor any use of defendant's freight depots or team or storage tracks. In the latter case defendants' tracks would be used for transportation conducted by the Tennessee Central. In the case of the use actually asked defendants will conduct the transportation, and the dif-

ference is more than a mere difference in degree.

Most of the industries involved are situated from 2 to 7 miles from Shops Junction. The service asked is a railroad haul, and in our opinion constitutes transportation, as defendants tacitly concede when they argue that the local rates to and from Shops Junction and Vine Hill at which they had moved Tennessee Central competitive traffic are transportation rates for transportation to and from local points. Section 1 of the act requires railroads subject to the act to furnish transportation, including the transportation of cars of connecting carriers. Since adequate provision is made for the return of cars interchanged and for compensation for their use, and the use of tracks incidental to transportation conducted entirely by the carrier whose tracks are used is the very use which railroads are constituted to afford, no property is "taken" by these provisions. G. T. R'y Co. v. Michigan R'y Comm., 231 U. S. 457; C., M. & St. P. R'y Co. v. Iowa, 233 U. S. 334; C., I. & L. R'y Co. v. Railroad Commission, 95 N. E. 364; Pa. Co. v. U. S., 214 Fed. 445; St. L. & P. R. R. Co. v. P. & P. U. R'y Co., supra.

Complainants contend, moreover, that the local rates applied by defendants for the movement of Tennessee Central competitive traffic to and from Shops Junction have been applied as switching charges and that defendants have voluntarily subjected their tracks and terminal facilities to the use now asked for the Tenessee Central. The contention is not without merit. Defendants' terminals are admittedly open to noncompetitive Tennessee Central traffic; and the publication by the Nashville, Chattanooga & St. Louis of the rates to and from Shops Junction to apply on competitive Tennessee Central traffic in its terminal tariff from December 14, 1913, to January 25, 1914, constituted a distinct representation to the public that Tennessee Central competitive traffic would be switched at those rates by the Nashville, Chattanooga & St. Louis. Defendants explain this action on the ground that the expansion of the city had rendered Shops Junction an intracity or intraterminal point. Shippers, however, were under no duty to go behind the face of the tariff. Furthermore, no traffic other than Tennessee Central traffic is handled by defendants at Shops Junction, no pay station is maintained there, and defendants' tracks are not accessible at that point either by roadway or street. The Louisville & Nashville local rates similarly applied, which, as previously stated, are the rates between Nashville and Overton, Tenn., with intermediate application at Vine Hill, have never been published in the Louisville & Nashville terminal tariffs, but, on the other hand, have been applied to and from Shops Junction, which point is reached by the Louisville & Nashville only, through the operations of the Nashville terminals and over the rails of the Nashville, Chattanooga & St. Louis. It is fairly arguable, therefore, that the Louisville & Nashville also has applied its local rates as switching charges. But if defendants have voluntarily opened their terminals to Tennessee Central traffic they are not being compelled to do so. M. & M. Asso. v. P. R. R. Co., 23 I. C. C. 474; Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co., supra; Botsford & Barrett v. P. R. R. Co., 29 I. C. C. 469; Seattle Chamber of Commerce v. G. N. R'y Co., 30 I. C. C. 683.

The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville cause Nashville shippers little direct pecuni-

Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located. They are subject, however, to all the disadvantages of service by a single railroad. Shipments are frequently misrouted. If the railroads are shown to be at fault, delivery is made by drays at the railroad's expense, but only after the consignee has prepaid all charges, including drayage charges, and provided the consignee has notified the railroad of the error in routing before accepting the shipment. Delivery is delayed and frequently goods are damaged by drayage. Lumber merchants located on defendants' lines can not profitably take advantage of the milling-in-transit service accorded at Nashville by the Tennessee Central. Shipments may be delayed because of a car shortage on one line, although another line has a surplus of cars. Industries located on one line lose customers at other points who prefer shipment over the other lines. These disadvantages to shippers affect Nashville as a city and hinder its growth as an industrial center.

Under all of the circumstances disclosed we are of the opinion and find that defendants' refusal to switch competitive traffic to and from the Tennessee Central at Nashville on the same terms as noncompetitive traffic while interchanging both kinds of traffic on the same terms with each other is unjustly discriminatory, and that so long as defendants switch both competitive and noncompetitive traffic for each other at Nashville at a charge equal to the cost of the service, exclusive of fixed charges, the charges imposed for switching Tennessee Central traffic should not exceed the cost of the service performed.

Since defendants impose no charge upon shippers for the service performed by the Nashville terminals they virtually absorb the charges which they impose upon each. The charges imposed by the Tennessee Central for switching defendants' traffic are not absorbed, either in whole or in part. However, discrimination in the matter of the absorption of charges is not alleged in the complaint nor discussed in the record and therefore can not be considered.

It appears that there are more than 20 industries at Nashville which the Nashville terminals and the Tennessee Central both serve, over the same lead tracks. There is no evidence, however, that these industries are unduly preferred to the detriment of other industries at Nashville.

The Tennessee Central switches competitive and noncompetitive grain to and from defendant's lines from and to the Hermitage elevator located on its tracks several miles north of Shops Junction at a charge of \$2 per car, but refuses to accord this rate to other grain dealers located on its tracks at Nashville. Complainants challenge the discrimination. The conditions are not identical, but we do not find that they are sufficiently dissimilar to justify different switching charges. We find that the Tennessee Central unduly prefers the Hermitage elevator.

An order will be entered in accordance with the conclusions herein expressed.

HARLAN, Chairman, dissents.

EXHIBIT G.

ORDER.

At a general session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of February, A. D. 1915.

No. 6484.

CITY OF NASHVILLE AND TRAFFIC BUREAU OF NASHVILLE,

v.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY; LOUISVILLE & NASHVILLE TERM-INAL COMPANY; NASHVILLE, CHATTA-NOOGA & ST. LOUIS RAILWAY; NASHVILLE TERMINAL COMPANY; TENNESSEE CEN-TRAL RAILROAD COMPANY; AND H. B. CHAMBERLAIN AND W. K. McALLISTER, RE-CEIVERS THEREOF.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and fully investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby, notified and required to cease and desist, on or before May 1, 1915, and thereafter to abstain, from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., on the same terms as interstate non-competitive traffic, while interchanging both kinds of said

traffic on the same terms with each other, as said practice is found by the Commission in its said report to be

unjustly discriminatory.

It is further ordered. That said defendants Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby, notified and required to establish, on or before May 1, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the switching of interstate traffic to and from the tracks of the Tennessee Central Railroad Company at said Nashville, rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city, as said relation is found by the Commission in its said report to be nondiscriminatory.

It is further ordered, That defendants Tennessee Central Railroad Company and its receivers, H. B. Chamberlain and W. K. McAlister, be, and they are hereby, notified and required to cease and desist, on or before May 1, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving any greater switching charges to and from other points on the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., on interstate shipments of grain than are contemporaneously in effect on such shipments to and from the Hermitage elevator located on said tracks, as the present relation of such switching charges is found by the Commission in

its said report to be unjustly discriminatory.

It is further ordered, That said defendants mentioned in the next preceding paragraph hereof be, and they are hereby, notified and required to establish, on or before May 1, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting, in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply switching charges to and from other points on the tracks of the Tennessee Central Railroad Company at said Nashville on interstate shipments of grain which are no higher than the switching charges contemporaneously in effect on such shipments to and

from the Hermitage elevator located on said tracks, as such relation is found by the Commission in its said report to be nondiscriminatory.

And it is further ordered, That this order shall continue in force for a period of not less than two years from

the date when it shall take effect.

By the Commission.

[SEAL.]

GEORGE B. McGINTY, Secretary.



Louisville & Nashville Railroad Co., et al., vs. No. 30. In Equity.

UNITED STATES OF AMERICA, ET AL.

I, H. M. Doak, clerk of the District Court of the United States for the Middle District of Tennessee and the Nashville Division thereof, hereby certify that the foregoing in this Volume II, and the contents of Volumes I and III of this record, constitute a true, perfect and complete transcript of the record in the above-styled cause, as the same is on file or of record in my office. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, at Nashville, Tenn., this the 12th day of November, 1915.

H. M. Doak, Clerk.

NOV 15 1915
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1915.

No. 290

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., Appellants,

versus .

UNITED STATES OF AMERICA ET AL., APPELLEES.

APPELLANTS' PETITION AND MOTION FOR AN ORDER MAINTAINING THE STATUS QUO PENDING THIS APPEAL

and

BRIEF IN SUPPORT OF SAME.

H. L. STONE,
W. A. COLSTON,
CLAUDE WALLER,
EDWARD S. JOUETT,
Solicitors for Appellants.



SUPREME COURT OF THE UNITED STATES

LOUISVILLE & NASHVILLE RAILBOAD COMPANY,
ET AL., - - - Appellants,

United States of America, et al., - - Appellees.

versus

APPELLANTS' PETITION AND MOTION FOR AN ORDER MAINTAINING THE STATUS QUO PENDING THIS APPEAL.

The appellants come by this petition and move this court for an order that will maintain the status quo herein by suspending, during the pendency of this appeal, the execution and enforcement of the Interstate Commerce Commission's order of February 1, 1915, whose validity is attacked in this suit, or rather by continuing in effect the lower court's temporary suspension thereof, which it granted for only thirty days upon the idea that a permanent suspension pending the appeal was within the jurisdiction solely of this court.

As grounds for such motion appellants show the following facts:

In a proceeding before the Interstate Commerce Commission based upon a complaint by the City of Nashville and others against appellants' switching practices at Nashville, Tenn., an order was entered by the Commis-

sion requiring appellants, Louisville & Nashville Railroad Company and Nashville, Chattanooga and St. Louis Railway, to switch competitive cars for the Tennessee Central Railroad Company at Nashville upon the ground that they switched such cars for each other, and hence that their failure to switch them for the Tennessee Central Railroad Company was an unjust discrimination. Thereupon said appellants (plaintiffs below) brought this suit (Rec., Vol. I, p. 4) against the United States, the Interstate Commerce Commission, and the other parties to said proceeding for the purpose of enjoining the execution and enforcement of the Commission's said The Louisville & Nashville Terminal Company was joined as a party to the proceedings before the Commission but it is not a railroad company and has no interest in the case.

The application for an interlocutory injunction and temporary restraining order was heard by the court composed of Circuit Judge John W. Warrington and District Judges John E. McCall and Edward T. Sanford at Nashville on April 20, 1915, but was not decided until September 18, 1915. Meantime no restraining order was issued, but at the suggestion of the court the Interstate Commerce Commission postponed the effective date of its order until after the court should reach a decision. The court in its opinion (Rec., Vol. I, p. 59) sustained the validity of the Commission's order, and stated that a decree would be entered denying an injunction and dismissing the bill; but before the decree was entered plaintiffs made application for it to contain a provision suspending

the Commission's order pending an appeal to this court which plaintiffs contemplated taking at once. After a full hearing upon this application, the court on October 22, 1915, filed its second opinion (Rec., Vol. I, p. 77) in which, after a review of the authorities, it upheld the plaintiffs' contention that a court of equity had inherent power to maintain the existing status, pending appeal, even though the bill was dismissed, decided that a temporary suspension pending appeal should be granted, and announced the following finding of facts and its conclusion based thereon:

"It further appears from the affidavits submitted by the petitioners, which are not controverted, that in the event the decree of this court denying the injunction prayed by the petitioners and dismissing their bill should be reversed by the Supreme Court, a great and irreparable injury would in the meantime have resulted to the petitioners by reason of the diversion of part of their traffic entering and leaving Nashville by competing railroads enabled to obtain access to local industries on their lines through the enforcement of the order of the Interstate Commerce Commission, and the expense and disturbance of their business caused by changing their former practices in the meantime so as to comply with the order of the Commission and the publication of new tariffs. And, on the other hand, it does not clearly appear that any particular individuals would suffer material financial injury in the event the order of the

Commission is stayed for a short time so as to enable the petitioners to perfect their appeal and to present to the Supreme Court an application for a preliminary suspension order of the Commission pending the hearing of the appeal in the Supreme Court, in accordance with the practice recognized in Omaha Street Railway v. Interstate Commission, 222 U. S. 582, 583.

"It results, therefore, that in the opinion of a majority of the court, in view of the importance of the questions involved in this case, and the irreparable injury which will result to the petitioners from the enforcement of the decree in this cause, if reversed, unless a short stay is granted, that the decree whose entry has heretofore been directed denying the preliminary injunction and dismissing the petition, should, under all the circumstances of the case, in the exercise of a sound discretion, be modified so as to provide that if the petitioners shall within thirty days from the entry of such decree take and perfect an appeal to the Supreme Court and also present to that court, within such thirty days, a petition for a preliminary suspension of the order of the Commission pending the determination of such appeal, the enforcement of the order of the Commission should be stayed, until a decision by the Supreme Court upon the question of granting such preliminary suspension of the order of the Commission shall be rendered; provided, however, further, that in addition to the ordinary appeal bond,

the petitioners shall also, at or before the time of the allowance of an appeal, make and file in this court their bond, in the penal sum of \$25,000, payable to the clerk of this court, with sureties to be approved by him, conditioned that in the event that petitioners shall not, within thirty days from the entry of such decree, take and perfect an appeal to the Supreme Court and also present to that court, within such thirty days, a petition for a preliminary suspension of the order of the Commission pending such appeal, or in the event the appeal from the decree of this court is dismissed by the petitioners or the decree of this court denying the interlocutory injunction and dismissing the petition is affirmed by the Supreme Court, they will, on demand, pay to the party or parties entitled thereto, all legal damages accruing to them by reason of the stay of the order of the Commission granted by such decree."

The final decree, modified by the insertion of said stay provision, was duly entered on October 22, 1915. (Rec., Vol. I, p. 81.)

Appellants, presenting this petition and motion pursuant to said order, state that the uncontroverted evidence appearing in the record shows that if this case shall be reversed, the net loss which they will have sustained by the enforcement of the Commission's order will amount to \$16,000 per month, or \$500 per day, with no possibility of recoupment; that this money will go, not to the shipping public represented by complainants

before the Commission, but to appellants' competitors, The Tennessee Central Railroad Company and its connections, none of which were complainants; and that practically the only benefit which will accrue to the interested public at Nashville (the shippers whose industries are located upon appellants' tracks) will be relief from the slight additional expense and inconvenience incident to draying in the very rare and exceptional instances where an inbound car, destined for an industry on appellants' terminal tracks, is accidentally misrouted and comes in over the Tennessee Central instead of over appellants' lines—an occurrence which according to the evidence does not ordinarily happen one time in a thousand.

Appellants further show that, in addition to the above financial loss, a change of the switching practices at Nashville will necessitate the expensive publication throughout the country of new tariffs showing such change, and if the case be reversed, the re-publication of the present tariffs will cause additional expense and great confusion, uncertainty and inconvenience to all other railroads and to all shippers.

As to the merits, appellants state briefly that the single question involved in this appeal is whether or not the facts concerning appellants' switching arrangements at Nashville (which are undisputed and are set out in detail in the court's opinion) constitute as a matter of law, a switching for each other, and hence a facility which, under Section 3 of the Act to Regulate Commerce requiring the furnishing of equal facilities, must be furnished to the Tennessee Central Railroad Company.

"Switching" by one railroad for another, as the term is used in this and similar cases that have come before the Commission and the courts, is the movement of a car of freight between an industry on the terminal tracks of one railroad and the point of interchange with another railroad. Whether it be an outbound car moving from the industry to the point of interchange with the other railroad, or an inbound car moving from the said point of interchange to the industry, the movement is performed by the engine and crew of the company upon whose tracks the industry is located, and that company is said to switch for the other.

By the term competitive freight traffic (which the Commission's order requires appellants to switch for the Tennessee Central Railroad Company, because, as it declares, they switch such traffic for each other) is meant freight cars which move to or from industries located upon appellants' terminal tracks at Nashville when the point of origin or of destination can be reached by one or both of appellants and also by the Tennessee Central Railroad, or its connections—and at the same rate. Such cars the appellants decline to switch between the industries on their tracks and the point of interchange with the Tennessee Central Railroad, because thus to give the Tennessee Central access to the appellants' terminals turns over to that company and its connections the linehaul revenue on such shipments as it can successfully solicit, and requires appellants, for a mere switching charge, to handle cars to and from industries on their tracks when they also are ready and able at the same

rate, and hence are entitled, to perform the remunerative transportation haul.

It is conceded by appellants that if they do switch for each other, in the meaning of that expression as used by this and other courts in analogous cases, it is a discrimination not to switch for the Tennessee Central Railroad Company, but they state that they do not switch for each other, and that there is no evidence in the record in support of the contention that they do.

They state that there is no conflict in the evidence as to the facts and circumstances bearing upon the relation of the two appellant companies and their terminal practices at Nashville, all of which are fully and correctly set out in the court's opinion (Rec., Vol. I, pp. 61-69) so as to require no further reference to the record; but they aver that these facts and conditions do not as a matter of law constitute a switching facility which they must give to another railroad or else be guilty of discrimination. The facts, very briefly summarized, are these:

As early as 1872, when the two companies were entirely independent of each other, some of the terminal tracks were used jointly under a contract providing for perpetual joint use. Subsequently, after the Louisville & Nashville Railroad Company had acquired a majority of the stock of the Nashville, Chattanooga & St. Louis Railway, the two companies procured the organization of a holding company, known as the Louisville & Nashville Terminal Company, and through it acquired and constructed jointly, at a cost of several million dollars, the

principal terminal yards, including the Union Station and adjacent tracks. Then in 1900, and before the Tennessee Central Railroad was built to Nashville, appellants solely for the sake of economy and their mutual convenience in enjoying these terminals which they owned jointly, entered into a contract for the joint operation of these joint terminals, which under this agreement were enlarged so as to comprise not only said principal terminals (which they held jointly under a 99-year lease) but also their individually owned tracks within the switching limits of Nashville, each thereby obtaining equal rights with the other to these tracks. Under this contract the "Nashville Terminals," which is the agreed designation of appellants' own partnership or joint operating agency, takes charge of all incoming trains (passenger and freight) upon arrival, breaks them up, distributes the cars, incidentally places the local cars at the industries to which they are destined (but likewise handles all through cars), reverses the process as to outbound trains, freight and passenger, and does all other terminal services whatsoever including the operation of the Union Depot and its accessories. The expenses are shared for the most part upon a wheelage basis, that is, in proportion to the number of cars handled for each, so that in fact, as well as in law, the cars switched to the various industries upon their jointly possessed tracks are not switched by either for the other, but each company, in effect, does its own switching at its own expense and without the payment of any switching charge by one to the other, or by a shipper to either; yet, solely because of this arrangement, the

lower court upheld the Commission's order requiring these companies to do an entirely different thing for the Tennessee Central Railroad Company, namely, to handle the cars coming or going over that road between the point of interchange and industries on their tracks, though the Tennessee Central had no interest in said tracks or in the equipment and train crews with which said cars were handled.

Besides its interest to the parties, this case is one of great general importance to the railroads of the country, for the plan here followed is the one under which railway companies, for the sake of economy and convenience, conduct union stations and operate joint terminal facilities in many cities; and their right so to do, without being required on that account to share the benefit of their terminals with nonparticipating companies, is as much involved in the decision of this case as are the rights of these appellants.

Wherefore, the premises considered, appellants pray that the court sustain this their motion for an order continuing, until this appeal is decided, the lower court's suspension of the Interstate Commerce Commission's order here involved.

H. L. Stone,
W. A. Colston,
Claude Waller,
Edward S. Jouett,
Solicitors for Appellants.

The following notice of the filing of the attached petition and motion has been accepted by counsel for the appellees:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., - - - Plaintiffs,

versus

United States of America, et al., - Defendants.

NOTICE.

The defendants will take notice that, on Monday November 15, 1915, the plaintiffs, pursuant to the third paragraph of the final decree entered herein, on October 22, 1915, will perfect their appeal of this suit to the United States Supreme Court by filing the duly certified record thereof with the clerk of said court and will thereafter, on the same day about the hour of 12:00 o'clock, noon, present to said court at its court-room in Washington, D. C., their petition and motion for the suspension, pending said appeal, of the Interstate Commerce Commission order involved herein.

This November 12, 1915.

H. L. Stone,
W. A. Colston,
Claude Waller,
Edward S. Jouett,
Solicitors for Plaintiffs.

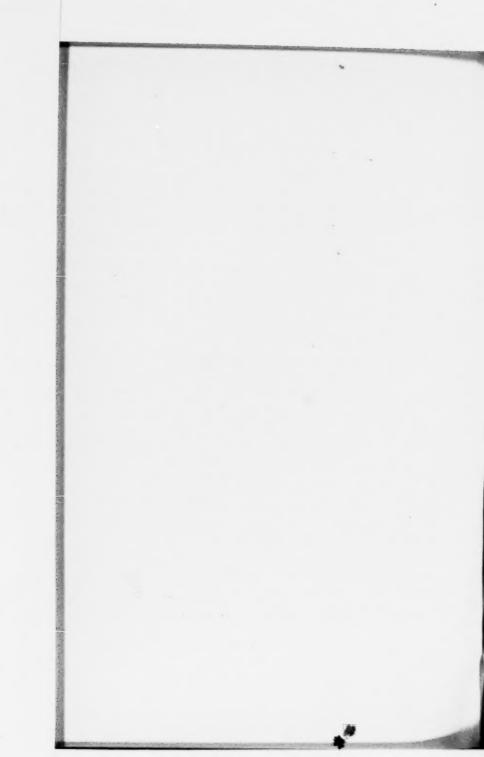


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SUPREME COURT OF THE UNITED STATES

LOUISVILLE & NASHVILLE RAILBOAD COMPANY,
ET AL., - - - - - - - Appellants,

versus

UNITED STATES OF AMERICA, ET AL., - - Appellees.

BRIEF OF APPELLANTS ON MOTION TO MAINTAIN THE STATUS QUO PENDING
THE APPEAL.

This motion for an order suspending the operative effect of the Interstate Commerce Commission's order, pending this appeal, comes to this court under circumstances which are exceptional and peculiarly favorable to the granting of such relief. This is true because the trial court, with a perfect knowledge of the case in all its details, was called upon to consider a motion identical with this one, and it expressly held that this was a case where, notwithstanding its dismissal of the bill, a suspension pending appeal ought to be granted, and this conclusion it supported by definite findings of fact which we submit should be equally persuasive with this court. Among them are these:

"That in the event the decree of this court denying the injunction prayed by the petitioners and dismissing their bill should be reversed by the Supreme Court, a great and irreparable injury would in the meantime have resulted to the petitioners by reason of the diversion of part of their traffic entering and leaving Nashville by competing railroads enabled to obtain access to local industries on their lines through the enforcement of the order of the Interstate Commerce Commission, and the expense and disturbance of their business caused by changing their former practices in the meantime so as to comply with the order of the Commission and the publication of new tariffs." (Rec., Vol. I, p. 79.)

and that

"on the other hand, it does not clearly appear that any particular individuals would suffer material financial injury in the event the order of the Commission is stayed for a short time so as to enable the petitioners to perfect their appeal and to present to the Supreme Court an application for a preliminary suspension of the Commission's order pending the hearing of the appeal in the Supreme Court, in accordance with the practice recognized in Omaha Street Railway v. Interstate Commission, 222 U. S. 582, 583." (Rec., Vol. I, p. 79.)

The court thereupon modified its original proposed decree and temporarily suspended the Commission's

order until the appeal could be perfected and application made here for a stay lasting throughout the pending of the appeal. This, it held, was done,

"in view of the importance of the questions involved in this cause, and the irreparable injury which will result to the petitioners from the enforcement of the decree in this cause, if reversed." (Rec., Vol. I, pp. 79, 80.)

I.

The Court's Power to Grant this Relief.

We assume that counsel for appellees will not question either the power of this court to take jurisdiction of this motion, or the propriety of its doing so, since it was their contention in the argument before the lower court that the Supreme Court alone, and not the trial court, had jurisdiction of such a motion. In support of such contention they read and urged upon the court's consideration the case of Omaha Street Railway v. Interstate Commerce Commission, 222 U.S. 582. In that case, where the validity of an order of the Interstate Commerce Commission was attacked, this court, citing authorities, specifically held that it had the power to, and it did, suspend the Commission's order pending an appeal, though there, as here, the lower court had denied an injunction and dismissed the bill. It was upon the strength of this authority, specifically cited by the lower court, (Vol. I, p. 79) that the latter confined its order of suspension to such a period as would enable appellants to perfect their

appeal and make application to this court for the further suspension during its pendency.

But it may be suggested that this court is loath to consider applications of this sort because of the time involved in their hearing; and we are not unaware of the statement of the court in Leonard v. Ozark Land Co., 115 U. S. 465, 468, a somewhat similar case, that to avoid such practice becoming prevalent this court in 1878 promulgated Equity Rule 93 (New Number 74).

It will be noted, however, that according to the letter of that rule it does not quite cover our case. It reads as follows:

"When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or a judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending, modifying or restoring the injunction during the pendency of the appeal upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party."

While application was made in this suit for an interlocutory injunction and a temporary restraining order, neither was in fact issued because, at the conclusion of the hearing upon plaintiff's motion therefor and upon defendant's motion to dismiss, the Interstate Commerce Commission, at the suggestion of the court, extended the effective date of its order here involved until a time after the decision of the court, though the court's

decision denying the injunction and dismissing the bill was not rendered until four months after the hearing.

Under these circumstances it was manifestly unsafe to wait until an appeal should be taken and then rely upon applying to the lower court for a stay order upon the claim that the spirit of Rule 74 entitled us to it because, though no formal injunction had ever been issued, a sort of voluntary one had been in effect. should undoubtedly have been met with the contention that the lower court was confined to the letter of this rule, and had no power to grant a suspension where no injunction had in fact been issued. We did, therefore, all that could be done when we applied to the trial court for the suspension as a part of its final decree. It was our view that the trial court's suspension could have been made to apply during the entire pendency of the appeal, but, evidently because of the argument of defendant's counsel that under the authority of the Omaha Street R'y case, supra, the Supreme Court should be permitted to determine this question for itself since it had cognizance of the appeal, the lower court confined its stay order to such period as would allow this court to consider it and extend it throughout the appeal if it saw fit so to do.

We respectfully submit, then, that whatever may be the policy of the court in the matter of preferring not to take cognizance of applications for suspensions where the parties might have proceeded in the lower court under Equity Rule 74, such rule of policy does not apply here because this is not such a case. Considering, then, that under the doctrine of the Omaha case this court has full power to maintain the status quo pending appeal, and that there is no established rule or policy against its taking cognizance of the motion, there remains the naked question whether the suspension should be granted.

II.

Precedents for Maintaining Status.

That the existing status be maintained, where practicable, pending an appeal is the underlying principle of the familiar doctrine of supersedeas, one of the cardinal features of appellate procedure. And where not to maintain such status might work great or irreparable injury this court and other Federal courts have time and again held that the power ought to be exercised.

A reference to some of the principal cases where the Federal courts have discussed the relief we are here seeking may be helpful.

A leading one is *Hovey* v. *McDonald*, 109 U. S. 150, where a certain fund, to which there were various adverse claimants, was placed in the hands of the receiver of the court. Upon final decree, the receiver was directed to pay the fund to the successful claimant. Meantime his adversary took an appeal, but, before a bond was executed, the receiver, acting under the verbal directions of the court to follow the decree, paid over the fund. The case was reversed, whereupon an attempt was made to hold the receiver personally liable for his

action in paying to the other party. The lower court refused to do this and the Supreme Court, in the second appeal, entitled as above, was called upon to review the lower court's action. The Supreme Court this time affirmed the case, holding that the receiver's action was proper since the mere taking of an appeal did not in itself operate as a suspension of the power of the court below to enforce its decree; but the question as to whether the lower court could have preserved the status quo by an order, if it had chosen to do so, arose and was considered. It was held that neither the dissolution of the injunction nor the dismissal of the bill on its merits affected the right of the lower court, if it saw fit to do so, to preserve the status quo.

In considering the *Slaughter House cases*, 10 Wall. 273, which held that an appeal or a writ of error did not nullify the order of the lower court, granting or dissolving the injunction, the court (in *Hovey* v. *McDonald*), speaking of the Slaughter House cases, said:

"It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for a supersedeas were complied with. It was not decided that the court below had no power, if the purposes of justice required it, to order a continuance of the status quo until a decision should be made by the Appellate Court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the

effect of the decree as rendered; but it is a discretionary power, and its exercise or non-exercise is not an appealable matter."

This court's opinion that, notwithstanding the dissolution of the injunction and the dismissal of the bill, the lower court there ought to have preserved the status, is thus stated:

"Applying these principles to the present case, it is clear that the force of the decree was not affected by the appeal, although it was in the power of the special term to have continued the injunction and to have retained the fund in its control in the hands of the receiver had it seen fit to do so. Judging only from what appears in the record, we can not refrain from saying that, in this case, the latter course would have been eminently proper. It would have protected all parties and produced injury to none."

A pertinent precedent, which was approved by this court, is found in Cotting v. Kansas City Stock Yards Co., 82 Fed. 839, where was involved the validity of a statute of the State of Kansas prescribing certain maximum charges for services in the yarding, feeding and watering of live stock. The company insisted that the Kansas statute was void, both because the rates prescribed were too low, and because they did not apply to other stock yards, which did a similar business, though less in volume. A temporary restraining order was issued, but upon the hearing of the application for an in-

terlocutory injunction the Circuit Court revoked the temporary restraining order and denied the application for a temporary injunction. This was on October 4, 1887. The case was then prepared for a final hearing. By stipulation of the parties the pleadings were at once made up and the case was submitted upon its merits upon the proof taken on the motion for an interlocutory injunction. On October 28, 1897 (twenty-four days later), the court, in an opinion by Circuit Judge Thayer, dismissed the bill. In the opinion, and also in the final decree, was the following provision, which necessarily preceded an application under Rule 74, as that can come only after an appeal is allowed:

"The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the stock yards company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the Supreme Court in Hovey v. Mc-Donald, 109 U. S. 150, 161, 3 Sup. Ct. 136, it is the right and duty of the trial court to maintain, if possible, the status quo pending an appeal, if the questions at issue are involved in doubt; and Equity Rule 93 was enacted in recognition of that right. court is of opinion that the cases at bar are of such

moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question."

It accordingly, in the same final decree that dismissed the bill, stayed the operation of the Kansas statute provided within ten days an appeal was taken and a bond executed.

This case went to the Supreme Court and is reported in 183 U. S. 79. In the statement of the case Mr. Justice Brewer set out in full, with evident approval—at least with no indication of disapproval—the above quoted passage. The Supreme Court held that the statute in question was in fact void and reversed the finding of the lower court, thus demonstrating the propriety and justice of Judge Thayer's action in maintaining the status quo, pending the appeal. It will be noted that in the present case the appellants, in addition to the ordinary appeal bond, were required to and did give a special bond in the sum of \$25,000 which protects all interested parties if this preliminary application for a suspension is not granted, and if it is, then it further protects them if the appeal itself should be dismissed or the case affirmed.

This question was also considered in Louisville & Nashville Railroad Co. v. Siler, 186 Fed., at page 203. That was a suit to enjoin the enforcement by the Kentucky Railroad Commission of certain rates claimed by the railroad company to be legal. The case came up on motion for preliminary injunction, which was denied by the court, but, in order to preserve the rights of the par-

ties in the event the court should be in error, the restraining order, issued at the outset of the case, was continued in force until the case could be reviewed by appeal—and, as in the Cotting case, this was done before the appeal was taken and hence not under Rule 93. Here the court said:

"It follows that the motion for an interlocutory injunction in both its branches must be dented. However, the questions involved are of such importance that we assume that a review of our conclusions will be desired by complainant, pursuant to the special provision for such review found in Section 17 of the Act of June 18, 1910. If the Supreme Court, on such review, shall decide that complainant was entitled to this injunction, then it is apparent that our present refusal to grant the injunction would result in irremediable injury, on account of failure to preserve the status quo. Applying the reasons of the rule stated in Hovey v. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, 27 L. Ed. 888, and further stated in Cotting v. Kansas City Stock Yards Co., supra, 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 92, we have concluded that the restraining order of September 7, 1910, should be continued until an opportunity has been given for the complainant to secure a review, and subject to conditions which will be prescribed in the order to be entered."

The principal case, however, where the existing status has been maintained by suspending an order of the Interstate Commerce Commission, and that by the Supreme Court itself, is Omaha Street Railway v. Interstate Commerce Commission, 222 U. S. 582. There the Commerce Court sustained the Commission's order and dismissed the railway company's bill, as in our case, but this court without any such assistance from the trial court concerning the facts as is presented in this record, maintained the *status quo* until it could decide the appeal on its merits, saying:

"Upon the authority of Revised Statutes, Section 716; Ex parte Milwaukee Railroad Co., 5 Wall. 188; Leonard v. Ozark Co., 115 T. S. 465, 468; In re Classen, 140 U. S. 200, 207; In re McKenzie, 180 U. S. 536, 549; United States v. Shipp, 203 U. S. 563, 573; and upon full consideration of the facts bearing upon the propriety of the appellants' motion for an order to maintain the status quo pending this appeal, it is ordered that the enforcement of the order of the Interstate Commerce Commission entered November 27, 1909, and drawn in question in this case, be, and it is, suspended and enjoined during the pendency of this appeal, upon condition that within ten days herefrom the appellants execute unto the Interstate Commerce Commission and file in this cause a good and sufficient bond in the sum of \$10,000. with sureties to be approved by the clerk of this court, and conditioned that the appellants will promptly pay any and all damages which may be suffered by their several passengers and intended

passengers by reason of the granting or continuance of this order, if it is adjudged ultimately that the order of the Interstate Commerce Commission, drawn in question in this case, is a valid one."

In the argument before the lower court counsel for appellees contended that an order of the Interstate Commerce Commission was not subject to the powers of a court of equity quite to the same extent as other things which the maintenance of an existing status might affect; but we assume that, in view of the court's action in the Omaha case, no such limitation upon the powers of this court will be claimed.

Here it is manifest that the lower court reached the definite conclusion that the suspension of this order was proper and necessary. Whether it had the power to suspend it throughout the time of the appeal or not is immaterial. It went as far as it thought proper in view of this court's conceded power over the same matter. The appellants did all they could. We submit then, that whatever may be the disinclination of this court under ordinary circumstances covering motions of this sort, the interests of justice require that in this case the obvious purpose and desire of the lower court should be carried to completion.

We do not, however, rely alone on the lower court's having reached the conclusion that the facts justify and require this suspension of the Commission's order. On the contrary, if the court is so inclined, we invite its most diligent independent study of the record. In aid of this we shall call attention to what the record

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shows, without dispute, as to the enormous and irremediable loss which appellants will sustain, if the case should be reversed, and also will refer briefly to the merits of the case as bearing upon the question of doubt concerning the correctness of the lower court's decision.

III.

The Great and Irreparable Loss of \$16,000 Per Month.

Whether the court will maintain the existing status, pending an appeal, must depend upon the circumstances of each case. Being in the nature of a preliminary injunction certain principles established by repeated adjudication apply. One of these is the doctrine of "comparative hardship or convenience to the respective parties" (132 Fed. 475). The general rule is thus stated by this court in Russell v. Farley, 105 U. S. 433, 438:

"It is a settled rule of the Court of Chancery, in acting on applications for injunctions, to regard the comparative injury which would be sustained by the defendant, if an injunction were granted, and by the complainant, if it were refused. Kerr on Injunctions, 209, 210. And if the legal right is doubtful, either in point of law or of fact, the court is always reluctant to take a course which may result in material injury to either party."

As applied to injunctions pending an appeal, we have quoted this court's statement of the rule as given in Hovey v. McDonald, supra, that the power "should al-

ways be exercised when any irremediable injury may result from the effect of the decree as rendered."

We respectfully insist that the uncontroverted facts proved in this case show that, if this court shall differ from the lower court upon the single question of law here involved (for it is a question of law applicable to facts which are not disputed), the railroad companies will suffer a wholly irremediable loss of \$16,000 per month, or more, unless this suspension be granted; whereas if it is granted and the case shall be affirmed, the damage suffered by the shipping public, represented by the original complainants, will be negligible; yet, for what little there is, full compensation will be secured by the bond for \$25,000.

In his affidavit (Rec., Vol. I, pp. 39-49), filed on the hearing of plaintiff's motion for an interlocutory injunction, Mr. A. R. Smith, Third Vice-President of the Louisville & Nashville Railroad Company, and the head of its Traffic Department, testified that the net actual loss to the Louisville & Nashville Railroad Co. incident to opening these terminals to the Tennessee Central for competitive business would be \$106,480 per annum.

The affidavit in detail sets forth intelligently and convincingly the facts and the reasoning upon which he arrived at that figure. It was not controverted nor questioned.

Mr. Charles Barham, the General Freight Agent of the Nashville, Chattanooga & St. Louis Railway, in a similar affidavit (Rec., Vol I, pp. 50-56) shows that the net loss of that company will be \$84,150. The combined loss to appellants is \$192,530 per annum, which is more than \$16,000 per month and over \$500 per day.

Assuming that the hearing of this appeal can be especially expedited it is hardly possible that the loss of the two companies can be less than \$100,000 by the time it is decided; and there is no possible theory upon which any of it can be recovered if the case shall be reversed.

In addition to this financial loss, there would be involved material expense to appellants and great confusion and inconvenience to all railroads and shippers throughout the country that do business with Nashville if new tariffs, now ordered to be put in, should, upon reversal by the Supreme Court, be set aside and the old system be uncontroverted.

C. C. Gebhard, Chief Clerk of the Traffic Department, of the Louisville & Nashville Railroad Company in his affidavit, filed upon the original motion for a temporary restraining order, thus describes the nature of the necessary advertisement of the new tariff and states the number of persons to whom it must be distributed:

"He says that in order to make legal publication of said tariffs it will be necessary for the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway to distribute them to all of their local freight agents, general division and soliciting representatives, as well as to connecting lines throughout the country generally, and that he has made investigation of the lists of persons to whom these distributions will have to be made, and

he says that such lists include approximately 1,900 persons." (Rec., Vol. I, p. 57.)

But what of the loss to the public caused by the suspension, if this court also should hold that the two roads are switching for each other and hence should switch for the Tennessee Central? We cheerfully answer this question.

It must be borne in mind that the only shippers interested are those whose industries are located upon the tracks of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, and that this proceeding does not relate to the non-competitive cars, for they are already freely switched.

It applies, then, only to the movement, between those industries and the point of interchange with the Tennessee Central, of cars which are to go out or come in over the Tennessee Central to points of destination, or from points of origin, which the L. & N. or N., C. & St. L. can reach at the same or a less rate. It is thus apparent that the shipper ordinarily need suffer no financial loss, for he can ship out or in over one of these two latter lines (upon which his industry is located) at the same rate as over the Tennessee Central's, and, according to the evidence, can get equally as good, if not better, service.

Practically his only actual injury, then, arises in the case of the occasional inbound misrouted car, which by mistake comes in over the Tennessee Central instead of the road upon whose tracks the industry is located. In a case of this sort the contents of the car are drayed to

his industry, but even this rare occurrence does not ordinarily entail a financial loss, since the Tennessee Central, and not the consignee, pays the drayage charge, except where he made the mistake as to routing—a thing which practically never occurs.

In support of the above general statement of the situation, we call brief attention to the finding of the Commission itself, and to the testimony offered by the complainants themselves upon the hearing.

The Commission in its report says:

"The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville cause Nashville shippers little direct pecuniary loss. Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located."

There was a suggestion of possible, but largely speculative, disadvantage and inconvenience in connection with car shortages, consignors' preference of lines and milling-in-transit privileges, but even such imaginary cases were possible only in extremely few instances in comparison with the general volume of traffic.

As to the cases of misrouting, which alone furnish possible occasion for tangible monetary loss, we submit that the general statement of the Commission that "shipments are frequently misrouted" is misleading and not supported by the evidence if the word "frequently" is to be given its usual meaning, for the proof overwhelm-

ingly shows that, speaking relatively, instances of misrouting are extremely rare, and when they do occur, the cost of drayage is paid by the railroad where the misrouting is its fault.

Reference to certain illustrative testimony on this question may not be amiss—all of it from witnesses introduced by the Traffic Bureau of Nashville.

C. J. Bonner, furniture manufacturer, testified on direct examination that the existing switching rules had caused drayage or switching loss "a few times." (Rec., Vol. II, p. 67.) On cross-examination, he admitted that during a period of ten or eleven years, in which his shipments amounted to 2,400 cars, he only knew of two instances when this had occurred.

E. S. Morgan, a merchandise broker, testified (Rec., Vol. II, p. 95) that during a period of seven years, where the shipments aggregated from 4,900 to 5,600 cars, there were only five instances where he suffered loss on account of drayage, and it appears that of those instances only one or two of them were chargeable to the switching rules.

R. H. McClellan, a grain merchant, testified (Rec., Vol. II, p. 125) to suffering occasional slight inconvenience, but stated that in a period of eight years, involving the handling of 12,000 cars, he had had no material trouble with the switching rules.

Practically the same admissions were obtained on the cross-examination of the other witnesses.

IV.

The Merits.

While not directly involved in the hearing of this motion it is not irrelevant to here add to the allegations of the motion at least a statement of the issue. It is proper first to state in explanation of the large record that the reasonableness of the switching charge for noncompetitive freight, and divers other questions of more or less moment, were involved in the trial below, but all of these questions are eliminated upon this appeal except the single one of discrimination, for the lower court rested its decision solely on that ground. See the assignment of errors (Rec., Vol. I, p. 84).

We are familiar with this court's holding in various cases that the courts will not review the Commission's findings of fact, and that this applies to the fact of discrimination as well as of the reasonableness of a rate, but this rule does not cover a case where the facts are undisputed and yet the conclusion therefrom involves an error of law. The trial court in its opinion (Rec., Vol. I, p. 61) concedes that "a conclusion which plainly involves, under the undisputed facts, an error of law" is reviewable by the courts.

Here, as stated, the facts are undisputed, and it is practically needless to go beyond the court's opinion to get all of them. The lower court and the Commission

found that these facts constitute a switching by one of the appellants for the other-a facility which each must also furnish to the Tennessee Central. We insist that as the two roads had actually in 1896 jointly acquired, under a 99-year lease from the holding company, the union station and principal terminal facilities, paying therefor nearly three million dollars; and as they in 1900, before the Tennessee Central came to Nashville, had by contract exchanged trackage rights over their individually owned terminal tracks outside of the jointly owned yards (a thing necessary to the proper enjoyment of the union station and other central jointly owned facilities, because the principal yards were located there), they had a perfect right, without opening the terminals to other roads, to operate those joint terminals, either separately or jointly.

They elected, as a matter of convenience (to prevent unnecessary interference of their switch engines and trains) and as a matter of economy, to jointly employ the superintendent, train crews, etc., and operate them jointly under a contract whereby at the end of the month each pays to the joint agency as nearly as possible the actual cost of the service it received. Solely because of this arrangement the Commission and court say that they are switching for each other, and hence must switch the competitive cars of the Tennessee Central over their terminals.

It means that they must with their own engines and crews handle the Tennessee Central's car over their terminals to and from industries on their tracks for a switching charge, notwithstanding the fact that neither performs any such service for the other, for in the case of their switching one does not handle the other's car, and the car of one does not pass over the other's tracks. Each owns an interest in the tracks equal to the other's; each is equally, or rather proportionately, interested in the agency used to operate the trains, and neither pays a switching charge, or anything else, to the other, but each pays to its own agency the actual cost of its own service.

The surrounding circumstances and conditions are not only not similar, as they must be to support the Commission's theory that Section 3 of the Act requiring the furnishing of equal facilities applies, but they are totally different—a proposition which seems reasonably patent, but which we shall debate more fully in our brief upon the merits of the appeal.

We will call attention to one other matter lest it create an incorrect impression. It is the case of Louisville & Nashville Railroad Co. v. United States, 238 U. S. 1, which affirmed the District Court (216 Fed. 672), which in turn had upheld the Commission's order (28 I. C. 533):

That case furnishes no precedent for this one, because the case there decided was entirely different from the one here presented. That case for the most part related to the rates on coal, but one branch concerned the practice of the carriers at Nashville with reference to switching coal. The evidence before the Commission relating to the conditions at Nashville was not nearly so full as in this case, and the Commission, in its report, specifically found that the L. & N. and the N., C. & St. L. operated their individually owned tracks independently of each other and switched for each other, saying:

"Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the Terminal Company, and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the Terminal Company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis."

The inaccuracy of the above statements is clearly and indisputably shown in this record.

When the case was taken to the District Court for review the transcript of evidence taken before the Commission was not introduced, so the lower court and this court were confined, as to the facts, to the finding of the Commission.

The discussion of the switching question, which was manifestly a subordinate issue in the case, will be found in the latter part of the lower court's opinion.

In setting out the facts that court showed clearly that it understood that the two railroads were independently operating their individually owned tracks and that they were actually switching cars for each other. For example, the opinion states (italics ours):

"That both the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway also individually own tracks which they operate independently of each other or of the Terminal Company, and upon which industries are located; that traffic of all kinds is freely interchanged by the Louisville & Nashville Railroad and Nashville & Chattanooga Railway to and from these industries as well as to and from those on the rails of the Terminal Company; that the tariffs of the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway provide that no charge will be made for switching between their respective lines at Nashville, the expense of this service presumably being absorbed by the line bringing in the traffic."

This is further shown by the court's discussion of the effect of the Commission's order, the court saying:

"Obviously its only effect is to require the petitioners to receive cars of coal from the Tennessee Central Railroad at junction points and to switch and deliver the same to industries along their respective lines, in like manner as they receive such cars from one another and switch and deliver the same, upon a just, reasonable and non-prohibitive switching charge, which they may themselves establish, but which shall be the same as they shall respectively make to one another."

With this wholly erroneous view of the facts, the courts, lower and appellate, very naturally held that as the two roads were switching for each other they should be required to switch for the Tennessee Central.

In the light of the difference between the two cases presented to this court, we take it that it will not be seriously urged that the opinion in the Nashville Coal Case affords any aid in determining whether or not, as a fact, according to the evidence which now for the first time is before the court, the two railroads in question switch competitive traffic for each other, and, therefore, are guilty of discrimination in declining to switch like cars for the Tennessee Central.

This arrangement for the joint acquisition, construction, maintenance and operation of terminals, was made in good faith and at vast cost before the Tennessee Central Railroad (the only other railroad in Nashville) was built.

The question involved in this case—whether the two constituent companies must at disastrous loss "unscramble" their great terminal property or share it with a competitor for a nominal switching charge—is one of great and general importance, and it would seem to be at least so doubtful as to justify this court in maintaining the existing status until the case can be heard upon its merits, especially since the lower court, with

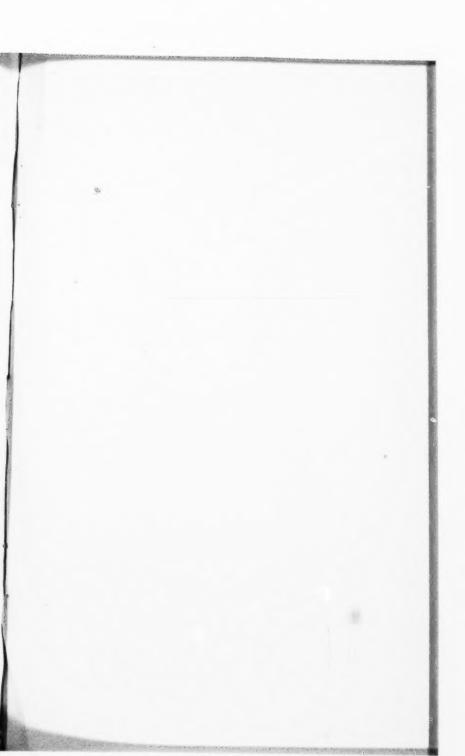
full knowledge of all the facts, has expressly held that the facts require such relief.

Respectfully submitted,

Edward S. Jouett,

Solicitor for Appellants.

H. L. STONE,
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CLAUDE WALLER,
Of Counsel.





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JAMES D. MAHER

CLERK

No. 290

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY ET AL.,
APPELLANTS,

1.

UNITED STATES OF AMERICA ET AL., APPELLEPS.

SUGGESTIONS IN OPPOSITION TO AN APPLICATION FOR SUSPENSION OF AN ORDER OF THE INTERSTATE COM-MERCE COMMISSION.

JOSEPH W. POLK,
EDWARD W. HINES,
Counsel for Interstate Commerce Commission.

WARRINGTON : GOVERNMENT PRINTING OFFICE : 1815

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMpany et al., appellants,

No. 711.

UNITED STATES OF AMERICA ET AL., APpellees.

SUGGESTIONS IN OPPOSITION TO AN APPLICATION FOR SUSPENSION OF AN ORDER OF THE INTERSTATE COM-MERCE COMMISSION.

The complaint under which the order here attacked was made by the Interstate Commerce Commission was filed by the city of Nashville and the Nashville Traffic Bureau against the Louisville & Nashville Railroad Co., the Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Co. The Tennessee Central Railroad Co. and its receivers and the Nashville Terminal Co. were made defendants. As the Louisville & Nashville Terminal Co. is merely a nominal party, the word "appellants" as used in this brief refers to the L. & N. and the N., C. & St. L. alone. By the complaint filed with the Commission the rates, rules,

and practices of the carriers named as defendants affecting the interchange and switching of interstate traffic in the city of Nashville were attacked as unreasonable and unjustly discriminatory.

STATEMENT OF FACTS.

Prior to August 15, 1900, the Louisville & Nashville and Nashville, Chattanooga & St. Louis operated their respective terminals independently. Each road switched for the other at a charge of \$2 per car, but on competitive traffic the switching charge was absorbed. Since August 15, 1900, all their terminal facilities, including the terminal buildings, tracks, and other facilities leased by them jointly from the Louisville & Nashville Terminal Co., except their individual team tracks and separate freight depots, have been maintained and operated jointly. The arrangement is called the " Nashville Terminals" and is managed by a board of three, composed of the general managers of the two roads and a superintendent of terminals. The total expense of maintenance and operation is apportioned monthly between the two roads on the basis of the total number of cars and locomotives of all kinds handled for each.

The Tennessee Central, which entered Nashville in 1901–2, after strong opposition from the Louisville & Nashville, leases its terminal facilities, consisting of a passenger station, freight depots, shops, main, side, and spur tracks, from the Nashville Terminal Co.

The appellants, through their unincorporated joint agent, the "Nashville Terminals," switch for the Tennessee Central any traffic for which neither of them competes at \$3 per car, but traffic for which either of them competes they refuse to permit the " Nashville Terminals" to switch for the Tennessee Central except at prohibitive rates. The commission, after a full hearing, made an order requiring appellants to switch for the Tennessee Central both competitive and noncompetitive traffic on the same terms on which they switch such traffic for each other. The order also required the Tennessee Central to reciprocate and to desist from certain practices in the matter of the switching and interchange of interstate traffic, but that company is not complaining of the order of the Commission.

The motion for an interlocutory injunction and motions by the United States and the Interstate Commerce Commission to dismiss were heard by Circuit Judge Warrington and District Judges Sanford and McCall, and after full consideration those judges announced the conclusion that the motion for an interlocutory injunction should be denied and the petition dismissed. [Rec., vol. I, p. 59.] After the judges had filed their opinion, but before the decree was entered, the appellants made a motion for an injunction pending the appeal, and the judges inserted in their decree a provision staying the order of the Commission until this court should act upon a motion for such injunction, provided the appellants should perfect their appeal and present

their petition and motion to this court for the injunction within 30 days from the date of the decree, which they have done. Only two of the three judges concurred in this modification of the decree.

ARGUMENT.

Counsel for appellants state that the sole ground on which they attack the order of the Commission in this court is that the finding of the Commission that appellants switch for each other is an erroneous conclusion of law.

While this court has the inherent power to issue any writ necessary to the exercise of its jurisdiction, we insist that this is not a proper case for the exercise of that power.

I.

THE EXACT QUESTION INVOLVED UPON THIS APPEAL HAS BEEN DETERMINED BY THIS COURT.

In Louisville & Nashville R. Co. v. United States, 238 U. S. 1, this court had occasion to consider an order of the Interstate Commerce Commission requiring appellants to switch coal for the Tennessee Central at Nashville upon the same terms on which they switched coal for each other, and the court, referring to the reciprocal arrangement here involved, at page 18, said:

Disregarding the complication arising out of joint ownership and the fact that each of the appellants switches for the other, it will be seen that the Commission is not dealing with an original proposition, but with a condition brought about by the appellants themselves. Under the provisions of the commerce act [24 Stat. 380] the reciprocal arrangement between the two appellants would not give them a right to discriminate against any person or "particular description of traffic."

But counsel for appellants say all the facts were not then before this court. If the facts were not before the court, it was the fault of appellants, who brought the case here upon the findings of the Commission without the evidence. The Commission in that case found that the appellants switched for each other without finding all the facts upon which that conclusion was based, and the appellants, choosing to accept that conclusion as correct, invoked the jurisdiction of this court to determine its legal effect. In that case this court commended the appellant for not making the evidence heard by the Commission a part of the record, but we may assume that in doing so the court did not anticipate that the failure to make that evidence a part of the record would later be used by the appellants as an excuse for reopening one of the questions presented in that case. Certainly, the appellants, having failed to avail themselves of the opportunity presented in that case to bring before the district court all the facts now presented, are not in a position to ask a suspension of the order of the Commission here involved pending the determination by

this court of the legal effect of facts, which they might have brought before this court in the former case. In that case this court, at page 10, said:

The railroad companies did not offer all of the evidence which was considered by the Commission; and on this appeal they do not include in the record all of the hundreds of pages of testimony which had been submitted to the Commission; but—conceding that the evidence was conflicting and tended to support the findings of the Commission—they insist that the facts found were insufficient in law to sustain the orders which were made.

The appellants did, therefore, in that case concede that the evidence tended to support the finding of the Commission, which they quote on page 23 of their brief, and which they now say was incorrect, although, so far as appears, all the facts which now appear in this record appeared in the record before the Commission in that case.

II.

THE ORDER OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The ultimate finding of the Commission is the finding of unjust discrimination, and that finding, although based on undisputed evidence, is a finding of fact. United States v. Louisville & Nashville R. Co., 235 U. S. 314, 320. The basis of that finding is the finding that appellants switch for each other, and that finding appellants insist is not supported

by substantial evidence. The question is a simple one. The appellants have pooled their terminals and have placed the operation of these terminals in the hands of their unincorporated joint agent, called "Nashville Terminals," which switches for each of The sole question is whether or not the appellants by this device can avoid the charge of unjust discrimination, which it is conceded would exist but for the creation of the joint agency. This question was answered in the negative by the Commission and by the judges below. The latter said [Rec., vol. I, p. 70]:

That each railroad does not separately switch for the other, but that such switching operations are carried on jointly is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act and its remedial purpose defeated by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done rather than in the particular device employed or the names applied to those engaged in it.

The Commission had jurisdiction to determine the question, and three judges having found not merely that there was substantial evidence to support the conclusions of the Commission but that its conclusion was correct, there is a strong presumption in favor of the correctness of that conclusion, espurcess of and thus excluded by the meralised seem of and those three the fitte that of June, 300; are bully meanthed in any actions I of east negations of lone. which man is accorded in the feepaster of the in Section one Name: Bonnessee, in Book Etc. page 17th, morround o wines a hometic made.

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Witnest. It is therefore distinctly under a and may agreed has our menouse of lease, haved June 180, 2006, and of the lettine and provincing thereof shall be conserved. to tribute only to the amone or passels of the featurines of entitle I thereof, and that all the provinces of any benewhich where is the waste of parties of that described in commiss in min the mercel, are hereby positioned, and grown and for nothing held, except as a learning better CATSON CANDALISMENT

BONDERS. It is framiner miderational that regress than esticle i of most indentitive of lease, court fame light. make the form of said interest therein channel and deminute. To explain to the end of Witers Che tauch from the from their of Just 19896.

property in a framework to the farmer than stantes H am v vi vil vill X X1 Mill liv and 27 of and indenture of lease dated June 15th 1896 are hereiv rescinded, shrugated and for nothing held from

until affine like date hereof.

ACTUM. It is further understood and agreed that actions 211 of said impenture of lease, dated June 15th, the steel to mot feet amended and changed to read as follows to wit. Said second parties do hereby, for flummatives and their respective successors and assigns, investing with the said first party, its successors and assigned like as rest for the premises or property, described is Aminie I of east indesture of lease, dated June 15th, till and for test for the improvements thereon, and for the purpose of reimburning and making whole the said first party for the noneys expended by it in the improvenestic special upon the parcels or tracts of land described is Armine II and III of said indenture of lease, the said second parties, their respective successors and assigns, will may the principal and interest of the bonds secured by the Fifty Year Four Per Cent. Gold First Mortgage for Three Millions Indare (61(00)(00)), executed by the amore is a Mastrille Terminal Company to the Manharten Frant Company, Trustee, of New York, on the first hay of December, 1902, and will pay the same to the builders thereof as said interest and principal become due. and the said second parties further, for themselves, and their respective encousages and assigns, covenant with the said first party, its successors and assigns, to pay all tanes, rules, charges and assessments that may be levied or impossed during the term aforesaid, on said premises or property, and on said improvements erected thereon.

And the said second parties do, for themselves, and their respective successors and assigns, further covenant with the send first party, its successors and assigns, that they will keep all of said improvements on said property in report and will moure the same for the full value thereof in some reputable insurance company or companies, and as often as the property so insured shall be burned down or damaged by fire, such sum or sums of money which shall be recovered or received by said secmel parties, or their respective successors and assigns, for and in respect of said insurance, shall be laid out or expended by them in rebuilding or repairing such property so insured or spen parts thereof as shall be so

bestroyed by fire.

SEVENTH. It is further understood and agreed that Article XVI of said lease, dated June 15th, 1896, shall be changed, amended and modified to read as folsews, to wit: Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, that at the expiration of the term, or at an earlier termination, of this lease, said second parties, or their respective successors and assigns, shall and will, peaceably surrender and yield up to the said first party, its successors and assigns, the premises described in Article I, with

their appurtenances.

EIGHTH. It is further understood and agreed that Article XVII of said indenture of lease, dated June 15th, 1896, shall be amended, modified and changed to read as follows, to-wit: Said second parties do hereby, for themselves, and their respective successors and assigns, covenant with the said first party, its successors and assigns, that in case of any breach or non-performance on the part of the said second parties, or their respective successors and assigns, of any of the covenants, provisos or conditions herein contained, or contained in said lease dated June 15th, 1896, which are not abrogated or cancelled by this instrument, it shall be lawful for said first party, its successors and assigns, at any time thereafter, into and upon the premises described in Article I of said lease, dated June 15th, 1896, or any part thereof, in the name of the whole, to re-enter and the same again repossess and enjoy, as of its or their former estate, anything hereinbefore contained to the contrary notwithstanding.

NINTH. It is further understood and agreed that all of the provisos and conditions contained in said indenture of lease, dated June 15th, 1896, which are not herein abrogated and cancelled, modified or altered, and which are not inconsistent with the provisions of this instrument, shall remain and continue in force for the unexpired

term thereof.

IN WITNESS WHEREOF, the said parties hereto have caused these presents to be signed by their respective Presidents or Vice-Presidents, attested by their respective Secretaries or Assistant Secretaries, and their respective corporate seals to be hereunto affixed. cuted in triplicate originals the day and year first hereinbefore written.

LOUISVILLE & NASHVILLE TERMINAL COMPANY, By E. C. LEWIS, President.

[L. & N. T. Co., SEAL.]

Attest:

W. H. BRUCE, Assistant Secretary.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY.

By WALKER D. HINES, First Vice-President. [L. & N. R. R. Co., SEAL,]

Attest:

W. H. BRUCE, Assistant Secretary.

NASHVILLE, CHATTANOOGA & ST. LOUIS R'Y. By J. W. THOMAS, President.

[N. C. & St. L. R'Y, SEAL.]

Attest:

J. H. AMBROSE, Secretary.

STATE of TENNESSEE.) County of Davidson.

Before me, E. B. DUVAL, a Notary Public in and for the State and County aforesaid, personally appeared E. C. Lewis, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of the Louisville & Nashville Terminal Company, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President, and that he further acknowledged that the seal thereto affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by W. H. Bruce, the Assistant Secretary of said Company.

Wtiness my hand and seal at office in Nashville, Ten-

nessee, this fifth day of December, 1902.

E. B. DUVAL, Notary Public.

STATE of KENTUCKY.) County of Jefferson.

Before me, G. W. B. OLMSTEAD, a Notary Public in and for the State and County aforesaid, personally appeared Walker D. Hines, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the First Vice-President of the Louisville & Nashville Railroad Company, the within named bargainor, a corporation, and that he as such First Vice President, being authorized to to do, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself, as First Vice-President, and that he further acknowledged that the seal thereto

affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by W. H. Bruce, the Assistant Secretary of said Company.

Witness my hand and seal at office in Louisville, Ken-

tucky, this 6th day of December, 1902.

G. W. B. OLMSTEAD, Notary Public.

STATE of TENNESSEE, County of Davidson.

Before me, E. B. DUVAL, a Notary Public in and for the State and County aforesaid, personally appeared J. W. Thomas, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the President of the Nashville, Chattanooga & St. Louis Railway, the within named bargainor, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President, and that he further acknowledged that the seal thereto affixed is the genuine corporate seal of the said Company, and that he caused the same to be duly attested by J. H. Ambrose, the Secretary of said Company.

Witness my hand and seal at office in Nashville, Ten-

nessee, this fifth day of December, 1902.

E. B. DUVAL, Notary Public.

STATE of TENNESSEE, County of Davidson.

Register's Office, December 24th, 1902.

I, BEN. F. LOFTIN, Register for said County, do certify that the foregoing instrument and certificate are registered in said office, in Book No. 272, page 407, that they were received Dec. 11, 1902, at 5 o'clock p. m., and were entered in Note Book 18, page 227.

BEN. F. LOFTIN,

Register of Davidson County. By W. H. LINGNER, D. R. STATEMENT OF LIST OF INDUSTRIES SERVED BY THE TENNES-SEE CENTRAL RAILROAD AT NASHVILLE, ENCLOSED WITH LETTER FROM S. W. FORDYCE, JR., TO THE SECRETARY OF THE COMMISSION, DATED OCTOBER 30, 1914.

RECAPITULATION

OF

Industries Served by the Tennessee Central R. R. Co.,

Nashville, Tennessee.

LOCATION.	Total Number of Concerns, regard- less of whether or not there is a common ownership	Total Number of Separate Concerns, that is, counting only one where there is a common
O- M C D D	of any of them.	ownership.
On T. C. R. R. exclusively(Lists 1, 2, 3 and 4.)		94
Served by independent tracks of T. C. R. R. and L. & NN., C. & St. L. terminals	32	32
terminals (List 6.)	24	22
Nashville, Tenn., October 15, 1914.	157	148

LIST No. 1.

INDUSTRIES LOCATED ON TENNESSEE CENTRAL RAILROAD BASIN ALLEY TRACK, SOUTH OF BROAD STREET. NAME OF INDUSTRY. CHARACTER

NAME OF INDUSTRY.	CHARACTER.
Doss Transfer Company	Transfer and Ot
Nichols & Shepard	Engineer and Storage
Nichols & Shepard W. T. Hardison & Co.	D. D
R. H. Worke & Co	Builders Supplies
tH. G. Lipscomb & Co. (also in List 2)	hay, Grain and Feed
†H. G. Lipscomb & Co. (also in List 2) Wizard Products Co-	
Emerson-Brantingham Implement Co	Sweeping Compound
Price-Bass Company (also in List 4).	Implements, Buggies, etc.
Morehead & Young	Coal Yard
Morehead & Young J. Leftkovitz & Co. (a) American Steam Food Co.	Hay, Grain and Feed
(a) American Steam Feed Co	Hides, Wool, etc.
(a) Nashville Feed Co	Stock Feed
Tune & Wright	Stock Feed
Tune & Wright	Poultry, Butter and Eggs
Ollie Alloway (h) Werthan Bag & Burlap Co	Poultry, Butter and Eggs
Warren Paint & Color Co	Scrap Iron
National Bisenit Co	C1
Union Carbide Sales Co	Crackers, etc.
Meyer Roth	Carbide
Meyer Roth B. Baff & Sons Loose-Wiles Risgnit Co	- Scrap Iron and Paper Stock
Loose-Wiles Biscuit Co	Country and Eggs
Philip Carey Roofing Co.	Crackers, etc.
McLemore-Crutcher Co	- Rooning
McLemore-Crutcher Co Warren Bros	Glass Warehouse
(a)-Same firm operating	under two names

 ⁽a)—Same firm operating under two names.
 (h)—Same firm operating under two names.
 †—Two locations.

sion is questioned, but with a case where the sole question is whether or not there was substantial evidence to support the finding of the Commission. The three judges, neither in their opinion nor in the order granting a temporary stay until this court should act upon the motion now made, have indicated the slightest doubt of the correctness of their conclusion. Indeed, the court went beyond what was required to uphold the order attacked and expressly approved the conclusions of the Commission.

Counsel for appellants seem to suppose that the parties to this appeal are the carriers on the one side and the shippers on the other, losing sight entirely of the fact that the injunction sought is against the Interstate Commerce Commission, a public administrative tribunal, whose decision here involved has already been reviewed and approved by three federal judges sitting in banc. Even if there be discretion to stay the order of the Commission after it has been thus approved, that discretion ought not to be exercised except in a very clear case.

V.

AS A GENERAL RULE THIS COURT WILL NOT MAKE AN ORDER TO MAINTAIN THE EXISTING STATUS UNLESS THAT STATUS EXISTS BY VIRTUE OF SOME ACT OF THE CHANCELLOR.

Where the chancellor has granted an interlocutory injunction the status thus created is one which exists by virtue of an act of the chancellor, and the same is true of the status which may exist by

virtue of the dissolution of an interlocutory injunction. While the status which may exist by reason of the dissolution of the injunction may be the same status which existed before any action was ever taken by the chancellor, it nevertheless exists by virtue of the chancellor's action in dissolving the injunction.

In Chegary v. Scofield, 5 N. J. Eq., 525, 530, where the question was as to the power of the New Jersey Court of Errors and Appeals to keep in force pending an appeal an injunction which had been dissolved by the chancellor, which restrained the sheriff from delivering a deed to the purchaser at a sheriff's sale, it was insisted for respondents that there was a distinction between the power of the court to restrain them from doing something which they derived their authority to do from the chancellor, and the power to restrain them from doing a thing which they were at liberty to do before any bill was filed, and the court held that while the distinction might be a sound one it had no application to the facts of that case. Chief Justice Hornblower, with whom a majority of the justices concurred, said:

The argument is that as the chancellor only dissolved the injunction, the sheriff was at liberty to act just as he might have acted before the bill was filed. It was just as if no injunction had ever been issued; that he was not executing any decree; he was not proceeding in the cause; he was not doing anything

for the doing of which he derived his authority from the chancellor.

It seems to me the inconclusiveness of this argument must appear by simply asking the question whether, after this bill was filed and after the chancellor had granted the injunction, the sheriff could have delivered the deed without the chancellor's permission? Certainly he could not; and then it is by the authority and permission of the court of chancery, and in virtue of the chancellor's judicial decision, that he acts in the matter and delivers the deed. It is this very decree that the appellant complains of in this court, and he comes here to get it reversed.

In every case cited by counsel for appellants in which either the lower court or this court granted a stay pending appeal there had been a restraining order or interlocutory injunction in effect in the lower court at some time prior to the decision appealed from, and after diligent search we have been unable to find any case in which any court has granted an injunction pending an appeal from an order dismissing a bill for an injunction where no injunction or restraining order had been granted in the lower court prior to the final decision of the case.

In Leonard v. Ozark Land Company, 115 U. S., 465, 468, this court, by Mr. Chief Justice Waite, said:

This court no doubt has the power to modify an injunction granted by a decree below in advance of a final hearing of an appeal on its merits. An application to that effect was made to us at the October Term, 1878, in the case of the Sandusky Tool Co. v. Comstock [not reported], and finding that such a practice, if permitted, would oftentimes involve an examination of the whole case and necessarily take much time, we promulgated the present equity rule 93, which is as follows:

"When an appeal from a final decree in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying an injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party."

The rule there quoted is now equity rule No. 74. The court did not provide for the granting of an injunction pending appeal where none had been granted, and it must have had a reason for not doing so. Since the court by the adoption of that rule was seeking to avoid an examination of the whole case upon such motions, it was just as important, if the two cases are governed by the same principle, to provide for the case where no injunction had been granted by the chancellor as it was to provide for a case where an injunction had been dissolved, and the fact that the former case was not provided for indicates clearly that it was the

view of this court that such an application should not in any case be considered.

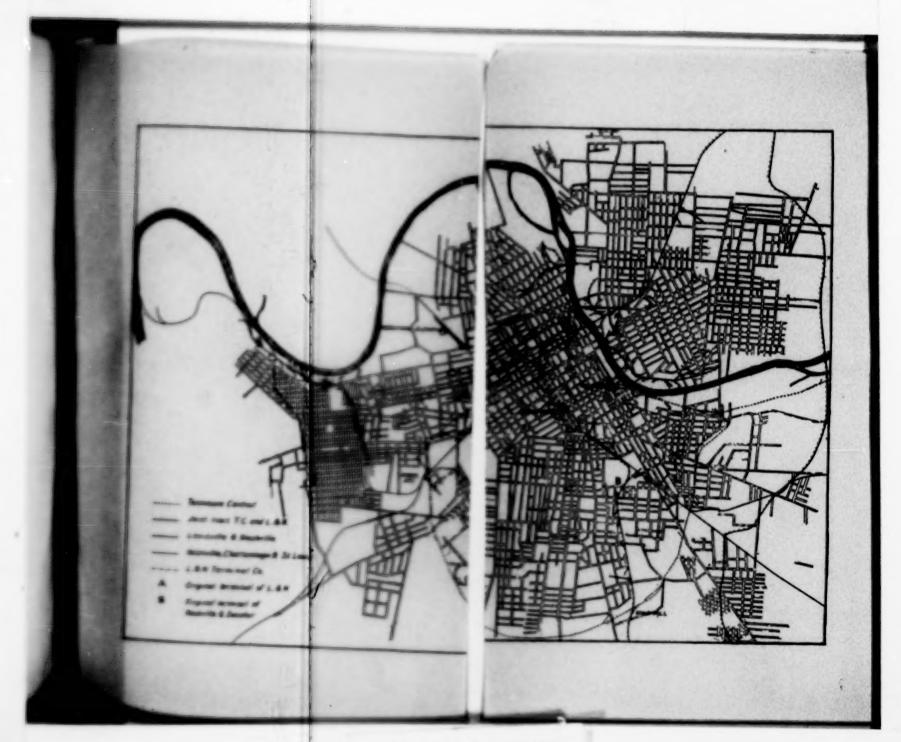
To dismiss a bill for an injunction after full hearing, and without any expression of doubt as to the correctness of the conclusion that the petitioners are not entitled to an injunction, and yet by the same decree to grant an injunction pending an appeal would be an anomaly in the law, and for that reason, no doubt, equity rule No. 74 makes no provision for such a case. The failure to make provision for such a case indicates at least that the case which would warrant such anomalous action must be most unusual.

This court has the inherent power recognized in section 262 of the Judicial Code to issue any writ necessary to make its jurisdiction effectual. If it appears that the subject matter of the litigation may be destroyed pending the appeal or that the right of appeal will be of no substantial value, if the existing status is not continued pending the appeal, the court may make an order maintaining the status quo. The mere fact, however, that the appellant may suffer substantial financial loss pending the appeal if the status quo is not maintained furnishes no reason for maintaining the existing status if the right sought to be established by the appeal is a continuing one and would be of great value for the future. In such a case the jurisdiction is not dependent on the preservation of the existing status pending the appeal.

That writs of supersedeas will be granted by this court only in exceptional cases is shown by what was said In re McKenzie, 180 U.S., 536, 549. In that case the court said:

Although the issue of the writ is not ordinarily required there are instances in which it has been done under special circumstances and in furtherance of justice.

This case is quite different from the case of Louisville & Nashville R. Co. v. Siler, 186 Fed., 176, 203. In that case a temporary restraining order was in effect when the district court acted upon the application for an interlocutory injunetion, and that order was kept in effect by the district court pending an appeal denying an interlocutory injunction, but only upon condition that the appellant pay into court the difference between the existing rate and the rate prescribed by the suspended order of the railroad commission of Kentucky, and no objection was made to that part of the decree. In that case the appellant would have had no remedy for the loss suffered in the event of reversal if the order had gone into effect, while the shippers were given a reasonably adequate remedy in the event of affirmance by requiring the difference between the two rates to be paid into court. Besides, that was a suit to annul an order of a state railroad commission, to which a different statute applied.



DATA CUT OFF IN CENTER

Decatur connected with the Nashville & Chattanooga near the terminus of the Nashville & Decatur. On May 1, 1872, the Nashville & Chattanooga, for an agreed annual rental, accorded to the Louisville & Nashville a perpetual right to run its trains and locomotives over a track to be constructed for the Nashville & Chattanooga by the Louisville & Nashville from the trestle then connecting the Louisville & Nashville's northern line with the Nashville & Northwestern to the depot grounds of the Nashville & Chattanooga; thence over the tracks of the Nashville & Chattanooga through said depot grounds; thence over a track to be constructed by the Louisville & Nashville as its own property from the southern approach to the Nashville & Chattanooga depot grounds to the depot of the Nashville & Decatur, alongside of the existing track of the Nashville & Chattanooga, the necessary right of way to be furnished by the Nashville & Chattanooga. It was also agreed that the Louisville & Nashville would contribute \$50,000 toward the construction of a union passenger station on the depot grounds of the Nashville & Chattanooga whenever the Nashville & Chattanooga should contribute an equal amount for the same purpose. The tracks provided for in the agreement were constructed immediately, but not the union passenger station. In 1873 the name of the Nashville & Chattanooga was changed to Nashville, Chattanooga & St. Louis. In 1893 and to facilitate the construction of a union passenger station as tentatively proposed in the agreement of 1872, the Louisville & Nashville and Nashville, Chattanooga & St. Louis organized the terminal company. The general incorporation laws of Tennessee were amended March 17, 1893, to authorize the organization of railway terminal corporations, Laws of Tennessee, 1892, ch. 11, p. 15; and on March 23, 1893, the terminal company was incorporated under them. Following its organization the terminal company existed in name only until April 27, 1896, when the Louisville & Nashville and Nashville, Chattanooga & St. Louis leased to it for a period of 999 years all of its property and railroad appurtenances thereon which the lessors severally owned or controlled within, or in the immediate vicinity of, the original depot grounds of the Nashville & Chattanooga. The terminal company covenanted to construct upon the premises demised and other premises to be used in connection there-

with all passenger and freight buildings, tracks, and other terminal facilities suitable and necessary for all railroads centering at Nashville that might contract with the terminal company therefor. Shortly thereafter, June 15, 1896, the terminal company leased back to the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly all property acquired by the terminal company under the lease of April 27, 1896, together with all other property which the terminal company has subsequently acquired or which it might acquire. Both the charter of the terminal company and the act under which it was incorporated authorized the terminal company to lease its property and terminal facilities to any railroad company utilizing them upon such terms and for such time as might be agreed upon by the parties. Meanwhile the people of Nashville had become desirous of better terminal facilities, particularly of a union passenger depot, and an ordinance authorizing a contract to that end between the city and the terminal company had been proposed, but with the proviso that the facilities proposed should also be available on an equitable basis to railroads which might be built in the future. The Louisville & Nashville and Nashville, Chattanooga & St. Louis opposed this proviso and an ordinance omitting it was passed, but was vetoed by the mayor on account of the omission. Nothing more was done until June 21, 1898. when the terminal company entered into an agreement with the city of Nashville whereby the terminal company agreed to construct a union passenger station on the premises covered by the leases of April 27 and June 15, 1896, at least two freight stations, platforms, tracks, switches, etc., certain viaducts over its tracks, and certain new streets and extensions of existing streets. The city agreed to secure the condemnation of land, to close certain existing streets, and to erect approaches to certain of the viaducts to be constructed by the terminal company. No provision was made for future railroads. The improvements agreed upon were duly made at a cost of approximately \$100,000 to the city and of several million dollars par value of bonds to the terminal company, which bonds were guaranteed by the Louisville & Nashville and Nashville, Chattanooga & St. Louis as authorized by the terminal company's charter, and were used to repay funds advanced by the guarantors to the terminal com-

pany and expended by the latter for the construction of the facilities which it had undertaken to construct. Pursuant to this agreement the terminal company constructed a union passenger station, two adjoining freight depots, a roundhouse, some coal chutes, and adjoining yard The tracks constructed are connected with the tracks. tracks of the Louisville & Nashville and of the Nashville, Chattanooga & St. Louis, but not with the tracks of the Tennessee Central. On December 3, 1902, the lease of June 15, 1896, from the terminal company to the Louisville & Nashville and Nashville, Chattanooga & St. Louis jointly was modified and in part rescinded. The duration of the lease was reduced from 999 to 99 years, its monetary considerations were modified, and the lessees were reinvested in severalty with their original titles to all the property leased by them to the terminal company April 27, 1896, except for the intervening lien of the first mortgage for \$3,000,000 which had been given to secure the terminal company's bonds.

The Louisville & Nashville owns all of the capital stock of the terminal company and 71.776 per cent of the outstanding capital stock of the Nashville, Chattanooga &

St. Louis, which it began to acquire in 1880.

Prior to August 15, 1900, the Louisville & Nashville and Nashville, Chattanooga & St. Louis operated their respective terminals independently. Each road switched for the other at a charge of \$2 per car, but on competitive traffic the switching charge was absorbed. Since August 15, 1900, all of their terminal facilities, including the terminal buildings, tracks, and other facilities leased by them jointly from the terminal company, except their individual team tracks and separate freight depots, have been maintained and operated jointly. The arrangement is called the "Nashville terminals" and is managed by a board of three, composed of the general managers of the two roads and a superintendent of terminals. The total expense of maintenance and operation is apportioned monthly between the two roads on the basis of the total number of cars and locomotives of all kinds handled for each. The association is not incorporated and is not a terminal company in the sense that the principal purpose of its existence is "to furnish terminal facilities for carriers which lack them." It is a joint agency voluntarily constituted by the Louisville & Nashville and Nash-



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 711.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY, ET AL., - - - - Appellants, versus

United States of America, et al., - - Appellees.

APPELLANTS' REPLY BRIEF ON MOTION FOR AN ORDER MAINTAINING STATUS QUO.

In this reply to appellees' brief upon the motion for an order maintaining the *status quo*, the appellants will discuss the various propositions put forth by the appellees in the order of their presentation in the appellees' brief.

I.

Has the Exact Question Involved on this Appeal Been Decided by this Court?

As foretold in our original brief, appellees insist that the question here involved is foreclosed by this court's decision in what is known as the Nashville Coal Case (238 U. S. 1). This is an evasion of the present contest and the raising of a collateral and improper issue as to the merits of which this record is necessarily silent, since there was no plea of former adjudication, nor other pleading, which would have given the appellants an opportunity to show the marked difference between the facts of the two cases.

The opinions, however, of the Commission, of the District Court and of this court, in that case, with slight reference to the record therein, show with sufficient definiteness how unlike they are.

There the principal contest related to certain important coal rates to Nashville from various mining points. As a manifestly subordinate addition to the main demand, there was a complaint that the L. & N. and N., C. & St. L. were discriminating against coal because under their tariffs they switched at Nashville all non-competitive freight for the Tennessee Central except coal. There was no complaint of a failure to switch competitive freight for the Tennessee Central (the issue in our case) on the ground that the two roads switched competitive freight for each other, or upon any other ground.

On the contrary, only the tariff relating to non-competitive freight (that is freight originating at or destined to points which the L. & N. and N., C. & St. L. did not reach) was in controversy, the claim being made that to switch non-competitive lumber, flour and other commodities and to refuse the same privilege to non-competitive coal was a discrimination against that commodity in violation of the Act.

The case was prepared and tried on these lines. The Commission, in its opinion, reduced the coal rates and also held the coal switching practice to be discriminatory. The railroad companies brought suit to enjoin the order and made application for an interlocutory injunction. Upon that preliminary motion the record of the proceedings before the Commission was not filed, because counsel conceived that the facts shown in the Commission's report itself did not as a matter of law justify the order. As to the switching question it was their opinion that even granting, for the sake of that motion, that the facts found by the Commission existed, the Commission had no authority over terminal movements because of the proviso to Section 3 of the Act, which seemed to withdraw from the Commission jurisdiction over terminals. court held that assuming the Commission found the facts correctly, which, as stated, the railroads for the purposes of that motion did not controvert, there was a discrimination which came within the prohibition of the Act. This question never having been decided by this court, an appeal was taken on October 27, 1914. But on February 23, 1915, this court rendered its opinion in Pennsylvania Company v. United States, 236 U. S. 351, holding that it was a discrimination covered by the Act for the Pennsylvania Company, at Newcastle, Pa., to switch competitive freight for three railroads and to refuse the same service to a fourth. On the strength of this case the switching branch of the Nashville case was affirmed.

What was the fact found by the Commisson which controlled both courts in their opinion and which appellees ask shall control this court in this case? It was that the two railroads operated their individually owned tracks independently and switched for each other. This was not involved in that case, was not argued by the railroads and was not necessary to the decision of the question of commodity discrimination involved in that case. That declaration of the Commission was contained in a half-page introductory statement of the historical facts, which were not connected, as at all essential, with the subsequent argument of the Commission upon the question of discrimination against coal and which did not begin to show all the facts bearing upon the true relations of the two companies.

In the Commission's ten-page opinion, there is no discussion of this question of switching for each other (so vital in our case) and no reference even to it, except the following brief statement in the above-mentioned introduction:

"Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operated independently each of the other or of the Terminal Company, and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the Terminal Company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis."

We know from the present record that these companies do not operate their individually owned tracks independently, and we believe it to be equally clear that the facts, which are uncontroverted, do not in law constitute a switching for each other.

That the District Court relied upon the above-quoted innocent statement is apparent from the quotations at page 24 of our brief. The same is true of this court's opinion. For example, referring to the Commission's order, this court said:

"It found that each switched for the other and both switched for the Tennessee Central, except as to 'coal and competitive business.' "

And in summing up its conclusion:

"In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switches, service to each other on all business, and to the Tennessee Central on all except coal and competitive business."

Appellees now seek to bind this court and appellants to the adoption of a certain alleged fact as true, whose existence is here in issue, because in another and different case the parties saw fit, on a preliminary motion, to test the sufficiency in law of such alleged fact without denying its existence. This position is wholly unterable.

months coding January 31, 1914, defendants delivered to the Tennessee Central for placement at Tomossee Central industries 245 leaded care and 196 may for transportaking as compared with 952 cars received by defendants from the Tennessee Central for placement by the Nashville terminals and 104 cars received for transportation. These figures furnish some evidence that definduate topether potentially control more traffic to and from Nantville than the Tennessee Central potentially materils and that defendants together may lose more manuscritive trulhe through recipered switching than they will gain, although the figures gives relative to the number of maractually interchanged apparently relate entitioned to accompetative traffic. These comparisons, however, are irredevant. Only the effect of recipewing excitating in defendants' lines individually is relevant, and as to this the record is eilent. Neither is there has evidence that the interchange of traffic between defendants' from is metasily advantageous. If not mutasily advantageous one line at least one not arge lack of suttonl advantage against reciprocal switching with the Tonnesses Control If the Nashville, Chattanooga & St. Lenie, for example, is willing to interchange traffic with the Lauisville & Nashville, even though it loses more truffer than it guins. it is not in a position to refuse to interpinage truffic with the Tennessee Central solely on the crossed that more traffic will be lost than gained. Defendants assert that the industries served by them through the Kasibrille termmale are about equally divided between their respective lines. This does not prove, however, that the minuse of traffic to and from the two groups of industries is the same or that the interchange of traffe between the two lines is motually advantageous. General assertious are insufficient, moreover, to prove that registrous switching arrangements are mutually advantaged in. House federite evidence should be given, preferably figures showing the precise amount of traffic surrendered or gained by each read participating in the arrangement. Funitions of Galroburg Ill supra.

The Louisville & Nashville interswinters competitive and noncompetitive traffic on the same terms with other carriers at several other points, notably Hompins. From, and Birmingham, Ala., while the Nashville, Chantamough & St. Louis admittedly interswitches both times of traffic

at the same rates with all connections at all points of connection with other carriers, except Nashville and Lebanon, Tenn., where it connects with the Tennessee Central. Since November 14, 1914, a switching charge of 2 per car for both kinds of traffic has been in effect at Lebanon. We do not find any substantial evidence that the conditions peculiar to the interchange of competitive traffic at such other points are substantially unlike the conditions at Nashville or that the interchange is mutually advantageous at such other points. Under these circumstances we think the almost unique policy pursued at Nashville requires more to justify it than has been shown.

The only use of defendants' "tracks or terminal facilities" asked by complainants for the Tennessee Central is the use incidental to the movement of Tennessee Central cars by defendants to and from industries on defendants' tracks. No use by Tennessee Central trains is asked, nor any use of defendant's freight depots or team a storage tracks. In the latter case defendants' tracks would be used for transportation conducted by the Tennessee Central. In the case of the use actually asked defendants will conduct the transportation, and the dif-

ference is more than a mere difference in degree.

Most of the industries involved are situated from 2 to 7 miles from Shops Junction. The service asked is a railroad haul, and in our opinion constitutes transportation, as defendants tacitly concede when they argue that the local rates to and from Shops Junction and Vine Hill at which they had moved Tennessee Central competitive traffic are transportation rates for transportation to and from local points. Section 1 of the act requires railroads subject to the act to furnish transportation, including the transportation of cars of connecting carriers. Since adequate provision is made for the return of cars interchanged and for compensation for their use, and the use of tracks incidental to transportation conducted entirely by the carrier whose tracks are used is the very use which railroads are constituted to afford, no property is "taken" by these provisions. G. T. R'y Co. v. Michigan R'y Comm., 231 U. S. 457; C., M. & St. P. R'y Co. v. Issue 233 U. S. 334; C., I. & L. R'y Co. v. Railroad Com-Marketon, 95 N. E. 364; Pa. Co. v. U. S., 214 Fed. 445; St. L. & P. R. R. Co. v. P. & P. U. R'y Co., supra.

Complainants contend, moreover, that the local rates applied by defendants for the movement of Tennessee Central competitive traffic to and from Shops Junction have been applied as switching charges and that defendants have voluntarily subjected their tracks and terminal facilities to the use now asked for the Tenessee Central. The contention is not without merit. Defendants' terminals are admittedly open to noncompetitive Tennessee Central traffic; and the publication by the Nashville, Chattanooga & St. Louis of the rates to and from Shops Junction to apply on competitive Tennessee Central traffic in its terminal tariff from December 14, 1913, to January 25, 1914, constituted a distinct representation to the public that Tennessee Central competitive traffic would be switched at those rates by the Nashville, Chattanooga & St. Louis. Defendants explain this action on the ground that the expansion of the city had rendered Shops Junction an intracity or intraterminal point. Shippers, however, were under no duty to go behind the face of the tariff. Furthermore, no traffic other than Tennessee Central traffic is handled by defendants at Shops Junction, no pay station is maintained there, and defendants' tracks are not accessible at that point either by roadway or street. The Louisville & Nashville local rates similarly applied, which, as previously stated, are the rates between Nashville and Overton, Tenn., with intermediate application at Vine Hill, have never been published in the Louisville & Nashville terminal tariffs. but, on the other hand, have been applied to and from Shops Junction, which point is reached by the Louisville & Nashville only, through the operations of the Nashville terminals and over the rails of the Nashville, Chattanooga & St. Louis. It is fairly arguable, therefore, that the Louisville & Nashville also has applied its local rates as switching charges. But if defendants have voluntarily opened their terminals to Tennessee Central traffic they are not being compelled to do so. M. & M. Asso. v. P. R. R. Co., 23 I. C. C. 474; Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co., supra; Botsford & Barrett v. P. R. R. Co., 29 I. C. C. 469; Seattle Chamber of Commerce v. G. N. R'y Co., 30 I. C. C. 683.

The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville cause Nashville shippers little direct pecuni-

ary loss. Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located. They are subject, however, to all the disadvantages of service by a single railroad. Shipments are frequently misrouted. If the railroads are shown to be at fault, delivery is made by drays at the railroad's expense, but only after the consignee has prepaid all charges, including drayage charges, and provided the consignee has notified the railroad of the error in routing before accepting the shipment. Delivery is delayed and frequently goods are damaged by drayage. Lumber merchants located on defendants' lines can not profitably take advantage of the milling-in-transit service accorded at Nashville by the Tennessee Central. Shipments may be delayed because of a car shortage on one line, although another line has a surplus of cars. Industries located on one line lose customers at other points who prefer shipment over the other lines. These disadvantages to shippers affect Nashville as a city and hinder its growth as an industrial center.

Under all of the circumstances disclosed we are of the opinion and find that defendants' refusal to switch competitive traffic to and from the Tennessee Central at Nashville on the same terms as noncompetitive traffic while interchanging both kinds of traffic on the same terms with each other is unjustly discriminatory, and that so long as defendants switch both competitive and noncompetitive traffic for each other at Nashville at a charge equal to the cost of the service, exclusive of fixed charges, the charges imposed for switching Tennessee Central traffic should not exceed the cost of the service performed.

Since defendants impose no charge upon shippers for the service performed by the Nashville terminals they virtually absorb the charges which they impose upon each. The charges imposed by the Tennessee Central for switching defendants' traffic are not absorbed, either in whole or in part. However, discrimination in the matter of the absorption of charges is not alleged in the complaint nor discussed in the record and therefore can not be considered.

It appears that there are more than 20 industries at Nashville which the Nashville terminals and the Tennes-

see Central both serve, over the same lead tracks. There is no evidence, however, that these industries are unduly preferred to the detriment of other industries at Nashville.

The Tennessee Central switches competitive and noncompetitive grain to and from defendant's lines from and to the Hermitage elevator located on its tracks several miles north of Shops Junction at a charge of \$2 per car, but refuses to accord this rate to other grain dealers located on its tracks at Nashville. Complainants challenge the discrimination. The conditions are not identical, but we do not find that they are sufficiently dissimilar to justify different switching charges. We find that the Tennessee Central unduly prefers the Hermitage elevator.

An order will be entered in accordance with the conclusions herein expressed.

HARLAN, Chairman, dissents.

EXHIBIT G.

ORDER.

At a general session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of February, A. D. 1915.

No. 6484.

CITY OF NASHVILLE AND TRAFFIC BUREAU OF NASHVILLE,

v.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY; LOUISVILLE & NASHVILLE TERM-INAL COMPANY; NASHVILLE, CHATTA-NOOGA & ST. LOUIS RAILWAY; NASHVILLE TERMINAL COMPANY; TENNESSEE CEN-TRAL RAILROAD COMPANY; AND H. B. CHAMBERLAIN AND W. K. McALLISTER, RE-CEIVERS THEREOF.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and fully investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby, notified and required to cease and desist, on or before May 1, 1915, and thereafter to abstain, from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., on the same terms as interstate non-competitive traffic, while interchanging both kinds of said

main the right and power to construct their own terminals. But the situation at St. Louis is most extraordinary, and we base our conclusion in this case, in a large measure, upon that fact."

It is true that this court in that case, to an extent, condemned the method of organization of the Terminal Railroad Association as a violation of the Sherman Act, and required it to be reorganized so as to provide a definite way for new railroads to be admitted into the company; but this finding was expressly made to rest upon the peculiar situation at St. Louis, which the court thus described:

"The result of the geographical and topographical situation is that it is, as a practical matter, impossible for any railroad company to pass through, or even enter St. Louis, so as to be within reach of its industries or commerce, without using the facilities entirely controlled by the Terminal Company."

This case came back to the Supreme Court on appeal from the order carrying out its mandate and the court in 1915, in approving the plan of reorganization under which other railroads could come in on equitable terms, reaffirmed the doctrine of the former opinion that, except in a peculiar case like that at St. Louis, it was lawful for independent carriers to combine for the purpose of obtaining terminal facilities. (236 U. S. 206.) But even in St. Louis the railroad desiring to come in did not do it for a switching charge but was required to pay its equitable proportion of the cost and maintenance of the property.

4. In this connection, as bearing upon the Commission's general idea of this Nashville situation, it is significant that the Commission in the Nashville Coal case got around this joint arrangement by taking as a precedent the action of the court in the above St. Louis Terminal Company case.

After announcing its conclusion that the practice of the L. & N. and N., C. & St. L. was unjustly discriminatory and declaring that they should be required to discontinue it, the Commission said:

"This disposition of the case is in consonance with the principle enunciated by the Supreme Court in U. S. v. Terminal R. R. Asso. of St. Louis, 224 U. S. 383."

Such a conclusion was unjustified both because the Commission has no power to administer the Sherman Act and because, if it had, the monopolistic geographical conditions existing at St. Louis did not exist at Nashville, where the Tennessee Central was not only not excluded but was doing business with extensive terminals of its own throughout the city, and had never made a complaint to Commission or court.

III.

Irreparable Injury.

Counsel disposes of the testimony of A. R. Smith and Chas. Barham, leading traffic officials of appellants, that the two companies would sustain a net loss of \$16,000 per month, if the Commission's order is put into effect, by declaring it to be "purely speculative"; but he does not point out any flaws in either the facts or the logic of their statements. Each shows the number of competitive cars of freight handled annually by the road he represents together with the net earnings thereon. It is then shown that the Tennessee Central connects with the Southern Railway system, and with the Illinois Central. The aggregate mileage of the Southern Railway and its allied lines is shown to be 10,171 miles and that of the Illinois Central 6,141 miles.

It will be understood that the freight under consideration is competitive freight, that is freight from or to points of origin or destination which the Tennessee Central and its allied lines can reach as well as the L. & N. and N., C. & St. L. It is further stated that the aggregate number of freight solicitors in the employ of the Illinois Central, Southern Railway, Queen & Crescent and Tennessee Central (not counting those of the Southern Railway's other allied interests) total 323, whereas the freight solicitors of the L. & N. and N., C. & St. L. aggregate 130. These 323 solicitors, scattered over 16,312 miles of railroad, to say nothing of their con-

nections, will have a chance at every car of freight going to Nashville, if it is known throughout the country that those lines can deliver upon the L. & N. and N., C. & St. L. terminals as well as can the owners of those terminals. · The rate being the same, this request for a division of business will undoubtedly meet with many favorable responses. Mr. Smith estimates that 25% of the inbound competitive traffic would thus be diverted to the Tennessee Central and its connections and that the solicitation of the local men at Nashville, backed by the known interest of the city of Nashville as a stockholder in the Tennessee Central, would divert 15% of the outbound competitive traffic. These figures appear upon their face to be entirely conservative. They represent the deliberate judgment of the two men, who, best of all others, are qualified to speak upon the subject; and their testimony is wholly uncontroverted. Mr. Smith's statement as to how this would work is pertinent here (Record, Vol. 1, page 48):

"Should reciprocal switching be practiced at Nashville, whereby the Tennessee Central R. R. will have access to all industrial side tracks on the Louisville & Nashville R. R., or those jointly controlled with the Nashville, Chattanooga & St. Louis Railway, extraordinary efforts would be put forth by the soliciting representatives and other officers of the Tennessee Central R. R., to secure as much competitive traffic as possible for and from their competitors' terminals. Inasmuch as the primary revenue interests of the Southern Railway, Queen & Crescent, and Illinois Central will be to secure as much traffic as they can for their longer and more remunerative routes, the efforts of the Tennessee Central would be

ably assisted by the numerous soliciting representatives of said lines. These combined efforts will necessarily meet with a considerable degree of success. As a rule, the 'home line' always possesses a measure of strength in the good will of the shippers. The lines of the Illinois Central, Southern Railway and Queen & Crescent cover such a vast amount of territory, that there is a large volume of traffic which is originated by them or which they deliver at stations, local and competitive, reached by their lines. Shippers and receivers on these lines can be much more readily reached by the agents and representatives of said lines, for the purpose of soliciting their traffic or influencing them, than by the representatives of the Louisville & Nashville R. R. or the Nashville, Chattanooga & St. Louis Railway. Shippers and receivers located on the tracks of the latter lines at Nashville, mostly entertain friendly sentiments towards their home lines, nevertheless they are all susceptible to solicitation, and while the representatives of the Louisville & Nashville R. R., as to its shippers hope to continue to receive the major share of their traffic, even under a reciprocal arrangement, we are bound, under the most favorable conditions, to lose a proportion of it."

Another significant feature that bears upon the part that will be played by the Southern Railway system and the Illinois Central, if the Tennessee Central is given access to appellants' terminals, is the fact that the Southern Railway and Illinois Central own the Tennessee Central's terminals at Nashville, title to which is in the name of a corporation called the Nashville Terminal Company. Of this Mr. Smith says:

"It is a matter of common knowledge that the Nashville Terminal Company, which supplies virtually all the terminal facilities of the Tennessee Central R. R. in the city of Nashville is owned, not by that line, but by the Illinois Central and South ern Railway, jointly or severally, which fact we may assume lends strongly to the interest those lines each may have in routing traffic via the Tennessee Central Railroad."

In this connection we call attention to the error of counsel for appellees in discussing the amount of this loss, when he says, near the conclusion of the discussion of this question, "But the real test of the loss which the appellants would suffer is not the gross revenue from the business which would be diverted, but the not revenue and this it is estimated would be about \$100,000 per year. (Rec., Vol. 1, p. 45.)"

Counsel here, through evident inadvertence, ears that the statement at the page mentioned referred to the aggregate net loss sustained by the two companies. Reference, however, to the citation given will show that it was Mr. A. R. Smith's testimony as to the net loss of the L. & N. alone, amounting to \$106,380. Mr. Barbam at page 55 of Vol. 2, states that the net loss of the N. C. St. L. would be not less than \$84,150. The sum of the two, representing the total net loss of the two companies is \$190,530 per annum, which by a typographical error, appears in our original brief as \$192,530. This is about \$16,000 per month.

But if this amount of damage would be suffered by enforcing the order, counsel claims that not to enforce it would cause an equal loss to the Tennessee Central, which has, therefore, lost \$2,000,000 in the past fifteen years and should not lose any more. But this is not a suit by

sion requiring appellants, Louisville & Duntwille Surrout Company and Nashville, Chattanovica and St. Louis Builway, to switch competitive cars for the Tonnessee Central Railroad Company at Nashville upon the ground that they switched such cars for each other, and hence that their failure to switch them for the Tonnessee Contral Railroad Company was an unjust discrimination. Thereupon said appellants (plaintiff below) hounght this sait (Bec., Vol. I, p. 4) against the Turned States. the Interstate Commerce Commission, and the other parties to said proceeding for the partonse of enjoying the execution and enforcement of the Commission's said The Louisville & Nashville Terminal Company was joined as a party to the proceedings before the Commission but it is not a railroad company and has no interest in the case.

The application for an interlocation injunction and temperary restraining order was heard by the mount composed of Circuit Judge John W. Warrington and Bushnet Judges John E. McCall and Edward T. Santianian and Sustained on April 20, 1915, but was not declined mote Santianian ber 18, 1915. Meantime no restraining broken was insued, but at the engrestion of the court the Interestate Commerce Commission postponed the effection date of its order until after the court should reach a mentione. The court in its opinion (Bee., Vol. I, p. 59) sustained the validity of the Commission's order, and stained that a fecree would be entered denying an injunction and disminsing the bill; but before the decree was accuracy plantation made application for it to contain a promision suspending

the Commission's order pending an appeal to this court which plaintiffs contemplated taking at once. After a full hearing upon this application, the court on October 22, 1915, filed its second opinion (Rec., Vol. I, p. 77) in which, after a review of the authorities, it upheld the plaintiffs' contention that a court of equity had inherent power to maintain the existing status, pending appeal, even though the bill was dismissed, decided that a temporary suspension pending appeal should be granted, and announced the following finding of facts and its construction based thereon:

"It further appears from the affidavits submitted by the petitioners, which are not controverted, that in the event the decree of this court denying the injunction prayed by the petitioners and dismissing their bill should be reversed by the Supreme Court, a great and irreparable injury would in the meantime have resulted to the petitioners by reason of the diversion of part of their traffic entering and leaving Nashville by competing railroads enabled to obtain seess to local industries on their lines through the enforcement of the order of the Interstate Commerce Commission, and the expense and disturbance of their business caused by changing their former practiess in the meantime so as to comply with the order of the Commission and the publication of new tariffs. And, on the other hand, it does not clearly appear that any particular individuals would suffer material financial injury in the event the order of the

Commission is stayed for a short time so as to enable the petitioners to perfect their appeal and to present to the Supreme Court an application for a preliminary suspension order of the Commission pending the hearing of the appeal in the Supreme Court, in accordance with the practice recognized in Omaha Street Railway v. Interstate Commission, 222 U. S. 582, 583.

"It results, therefore, that in the opinion of a majority of the court, in view of the importance of the questions involved in this case, and the irreparable injury which will result to the petitioners from the enforcement of the decree in this cause, if reversed, unless a short stay is granted, that the decree whose entry has heretofore been directed denying the preliminary injunction and dismissing the petition, should, under all the circumstances of the case, in the exercise of a sound discretion, be modified so as to provide that if the petitioners shall within thirty days from the entry of such decree take and perfect an appeal to the Supreme Court and also present to that court, within such thirty days, a petition for a preliminary suspension of the order of the Commission pending the determination of such appeal, the enforcement of the order of the Commission should be stayed, until a decision by the Supreme Court upon the question of granting such preliminary suspension of the order of the Commission shall be rendered; provided, however, further, that in addition to the ordinary appeal bond,

the petitioners shall also, at or before the time of the allowance of an appeal, make and file in this court their bond, in the penal sum of \$25,000, payable to the clerk of this court, with sureties to be approved by him, conditioned that in the event that petitioners shall not, within thirty days from the entry of such decree, take and perfect an appeal to the Supreme Court and also present to that court, within such thirty days, a petition for a preliminary suspension of the order of the Commission pending such appeal, or in the event the appeal from the decree of this court is dismissed by the petitioners or the decree of this court denying the interlocutory injunction and dismissing the petition is affirmed by the Supreme Court, they will, on demand, pay to the party or parties entitled thereto, all legal damages accruing to them by reason of the stay of the order of the Commission granted by such decree."

The final decree, modified by the insertion of said stay provision, was duly entered on October 22, 1915. (Rec., Vol. I, p. 81.)

Appellants, presenting this petition and motion pursuant to said order, state that the uncontroverted evidence appearing in the record shows that if this case shall be reversed, the net loss which they will have sustained by the enforcement of the Commission's order will amount to \$16,000 per month, or \$500 per day, with no possibility of recoupment; that this money will go, not to the shipping public represented by complainants

before the Commission, but to appellants' competitors, The Tennessee Central Railroad Company and its connections, none of which were complainants; and that practically the only benefit which will accrue to the interested public at Nashville (the shippers whose industries are located upon appellants' tracks) will be relief from the slight additional expense and inconvenience incident to draying in the very rare and exceptional instances where an inbound car, destined for an industry on appellants' terminal tracks, is accidentally misrouted and comes in over the Tennessee Central instead of over appellants' lines—an occurrence which according to the evidence does not ordinarily happen one time in a thousand.

Appellants further show that, in addition to the above financial loss, a change of the switching practices at Nashville will necessitate the expensive publication throughout the country of new tariffs showing such change, and if the case be reversed, the re-publication of the present tariffs will cause additional expense and great confusion, uncertainty and inconvenience to all other railroads and to all shippers.

As to the merits, appellants state briefly that the single question involved in this appeal is whether or not the facts concerning appellants' switching arrangements at Nashville (which are undisputed and are set out in detail in the court's opinion) constitute as a matter of law, a switching for each other, and hence a facility which, under Section 3 of the Act to Regulate Commerce requiring the furnishing of equal facilities, must be furnished to the Tennessee Central Railroad Company.

"Switching" by one railroad for another, as the term is used in this and similar cases that have come before the Commission and the courts, is the movement of a car of freight between an industry on the terminal tracks of one railroad and the point of interchange with another railroad. Whether it be an outbound car moving from the industry to the point of interchange with the other railroad, or an inbound car moving from the said point of interchange to the industry, the movement is performed by the engine and crew of the company upon whose tracks the industry is located, and that company is said to switch for the other.

By the term competitive freight traffic (which the Commission's order requires appellants to switch for the Tennessee Central Railroad Company, because, as it declares, they switch such traffic for each other) is meant freight cars which move to or from industries located upon appellants' terminal tracks at Nashville when the point of origin or of destination can be reached by one or both of appellants and also by the Tennessee Central Railroad, or its connections—and at the same rate. Such cars the appellants decline to switch between the industries on their tracks and the point of interchange with the Tennessee Central Railroad, because thus to give the Tennessee Central access to the appellants' terminals turns over to that company and its connections the linehaul revenue on such shipments as it can successfully solicit, and requires appellants, for a mere switching charge, to handle cars to and from industries on their tracks when they also are ready and able at the same

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMpany et al., appellants,

UNITED STATES OF AMERICA ET AL.

No. 711.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of section 2 of the act of June 16, 1910, 36 Stat. 542, and the Urgent Deficiency Act of October 22, 1913, 38 Stat. 208, 220, respectfully moves the court to advance the aboveentitled cause for hearing on a day convenient to the court during the present term.

This is an appeal from a final decree of the District Court of the United States for the Middle District of Tennessee, denying a motion for an injunction against the enforcement of an order of the Interstate Commerce Commission, and dismissing the petition of appellants therefor.

The case involves the question, inter alia, whether the rates and practices of the Louisville & Nashville 30741-16

Railroad Company and the Nashville, Chattanooga & St. Louis Railway, established by agreement between the said companies, affecting the switching of competitive carload traffic at Nashville, subjected to undue and unreasonable prejudice and undue discrimination competitive carload traffic received from and delivered to the Tennessee Central Railroad Company, at Nashville, in violation of section 3 of the Act to Regulate Commerce.

The question is one of importance not only to the railroads and the shipping public generally, but also to the Interstate Commerce Commission in the administration of the Act to Regulate Commerce, and for that reason an early determination thereof by this court is desirable.

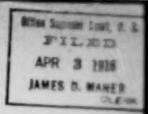
Opposing counsel concur.

JOHN W. DAVIS, Solicitor General.

MARCH, 1916.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 290

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
APPELLANTS,

210.

UNITED STATES OF AMERICA, APPRILEDS.

MOTION TO REASSIGN.

EDWARD 8. JOUETT,
Of Counsel for Appellants.

"That is the event the decree of this court despiting the injunction prayed by the peninimans and dismining their bill should be reversed by the forground Court, a great and irreparable injury amount in the meantime have resulted to the politiceness by received to the politiceness by received features and leaving Nashville by competing references amountied to obtain access to local industries on their lines through the enforcement of the order of the injuries and disturbance of their business called by changing their former practices in the meantime to us to comply with the order of the Commission and the publication of new tariffs." (Rec., Vol. 1, p. 78.)

and that

that any particular individuals would suffer meterial financial injury in the event the order of the Commission is stayed for a short time at us mable the petitioners to perfect their appeal and to present to the Supreme Court as application for a preliminary enspension of the Commission's arrive pending the bearing of the appeal in the Supreme Court, in accordance with the practice recognised in Omeha Street Bailway r. Interstate Commission, 255 U.S. 583. (Bec., Vol. I. p. 79.)

The court thereupon modified its original proposed decree and temperarily suspended the Commission's

order until the appeal could be perfected and application made here for a stay lasting throughout the pending of the appeal. This, it held, was done,

vin view of the importance of the questions involved in this cause, and the irreparable injury which will result to the petitioners from the enforcement of the decree in this cause, if reversed." (Rec., Vol. I, pp. 79, 80.)

I.

The Court's Power to Grant this Relief.

We assume that counsel for appellees will not question either the power of this court to take jurisdiction of this motion, or the propriety of its doing so, since it was their contention in the argument before the lower court that the Supreme Court alone, and not the trial sourt, had jurisdiction of such a motion. In support of such contention they read and urged upon the court's consideration the case of Omaha Street Railway v. Interstate Commerce Commission, 222 U. S. 582. In that case, where the validity of an order of the Interstate Commerce Commission was attacked, this court, citing authorities, specifically held that it had the power to, and it did, suspend the Commission's order pending an appeal, though there, as here, the lower court had denied an injunction and dismissed the bill. It was upon the strength of this authority, specifically cited by the lower court, (Vol. I, p. 79) that the latter confined its order of suspension to such a period as would enable appellants to perfect their

appeal and make application to this court for the further suspension during its pendency.

But it may be suggested that this court is loath to consider applications of this sort because of the time involved in their hearing; and we are not unaware of the statement of the court in Leonard v. Ozark Land Co., 115 U. S. 465, 468, a somewhat similar case, that to avoid such practice becoming prevalent this court in 1878 promulgated Equity Rule 93 (New Number 74).

It will be noted, however, that according to the letter of that rule it does not quite cover our case. It reads as follows:

"When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or a judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending, modifying or restoring the injunction during the pendency of the appeal upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party."

While application was made in this suit for an interlocutory injunction and a temporary restraining order, neither was in fact issued because, at the conclusion of the hearing upon plaintiff's motion therefor and upon defendant's motion to dismiss, the Interstate Commerce Commission, at the suggestion of the court, extended the effective date of its order here involved until a time after the decision of the court, though the court's

decision denying the injunction and dismissing the bill was not rendered until four months after the hearing.

Under these circumstances it was manifestly unsafe to wait until an appeal should be taken and then rely upon applying to the lower court for a stay order upon the claim that the spirit of Rule 74 entitled us to it because, though no formal injunction had ever been issued, a sort of voluntary one had been in effect. should undoubtedly have been met with the contention that the lower court was confined to the letter of this rule, and had no power to grant a suspension where no injunction had in fact been issued. We did, therefore, all that could be done when we applied to the trial court for the suspension as a part of its final decree. It was our view that the trial court's suspension could have been made to apply during the entire pendency of the appeal, but, evidently because of the argument of defendant's counsel that under the authority of the Omaha Street R'y case, supra, the Supreme Court should be permitted to determine this question for itself since it had cognizance of the appeal, the lower court confined its stay order to such period as would allow this court to consider it and extend it throughout the appeal if it saw fit so to do.

We respectfully submit, then, that whatever may be the policy of the court in the matter of preferring not to take cognizance of applications for suspensions where the parties might have proceeded in the lower court under Equity Rule 74, such rule of policy does not apply here because this is not such a case. Considering, then, that under the doctrine of the Omaha case this court has full power to maintain the status quo pending appeal, and that there is no established rule or policy against its taking cognizance of the motion, there remains the naked question whether the suspension should be granted.

II.

Precedents for Maintaining Status.

That the existing status be maintained, where practicable, pending an appeal is the underlying principle of the familiar doctrine of supersedeas, one of the cardinal features of appellate procedure. And where not to maintain such status might work great or irreparable injury this court and other Federal courts have time and again held that the power ought to be exercised.

A reference to some of the principal cases where the Federal courts have discussed the relief we are here seeking may be helpful.

A leading one is *Hovey* v. *McDonald*, 109 U. S. 150, where a certain fund, to which there were various adverse claimants, was placed in the hands of the receiver of the court. Upon final decree, the receiver was directed to pay the fund to the successful claimant. Meantime his adversary took an appeal, but, before a bond was executed, the receiver, acting under the verbal directions of the court to follow the decree, paid over the fund. The case was reversed, whereupon an attempt was made to hold the receiver personally liable for his

action in paying to the other party. The lower court refused to do this and the Supreme Court, in the second appeal, entitled as above, was called upon to review the lower court's action. The Supreme Court this time affirmed the case, holding that the receiver's action was proper since the mere taking of an appeal did not in itself operate as a suspension of the power of the court below to enforce its decree; but the question as to whether the lower court could have preserved the status quo by an order, if it had chosen to do so, arose and was considered. It was held that neither the dissolution of the injunction nor the dismissal of the bill on its merits affected the right of the lower court, if it saw fit to do so, to preserve the status quo.

In considering the Slaughter House cases, 10 Wall. 273, which held that an appeal or a writ of error did not nullify the order of the lower court, granting or dissolving the injunction, the court (in Hovey v. McDonald), speaking of the Slaughter House cases, said:

"It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for a supersedeas were complied with. It was not decided that the court below had no power, if the purposes of justice required it, to order a continuance of the status quo until a decision should be made by the Appellate Court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the

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SUPREME COURT OF THE UNITED STATES OCTOBER TERM. 1915.

LOUISVILLE & NASHVILLE RAILROAD COM-PANY, ET AL., - - - - Appellants,

versus
United States of America, et al.,

- Appellees.

BRIEF FOR APPELLANTS.

I.

STATEMENT.

This case relates to the switching practices of the three railroads that serve the city of Nashville, Tenn.—the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Tennessee Central Railroad Company. Only a single question is involved and that is one of law. It is whether a certain joint terminal arrangement between the first two of these railroads constitutes an unlawful discrimination against the third, when the latter has had no part in the construction, maintenance or operation of these joint terminals, and hence is not admitted to their use. In other words, is this joint ownership and operation of terminals by the

Except where otherwise specified, all stalics are ours.

two roads a "switching for each other" which requires them to switch for the third if they would be free from the penalty of an unjust discrimination?

They voluntarily switch non-competitive cars between industries on their tracks and the point of interchange with the Tennessee Central; but they refuse to switch competitive cars—those whose road-haul service they themselves can perform at the same rate—because to do so is to turn over to their competitor for a nominal switching charge the valuable road-haul revenue accruing from the shipments moving to or from industries upon their cwn terminals.

Complaint was filed with the Interstate Commerce Commission by the city of Nashville and its Traffic Bureau to compel the first two roads to switch competitive cars between industries on their lines and the point of interchange with the Tennessee Central. The Commission held that the arrangement between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis was in fact merely a "switching for each other" and hence their refusal to switch for the Tennessee Central was a discrimination which it ordered the two roads to cease, that is, by dissolving their joint terminals or by admitting the Tennessee Central to the equal commercial use of them. (28 I. C. C. 533.)

By "commercial" use is meant the beneficial enjoyment, through having the two roads handle or switch the T. C.'s cars, in contradistinction to an "actual" use which would result if the T. C. had access to their terminals with its yard engines.

This suit was brought by appellants in the District Court for the Middle District of Tennessee to enjoin the enforcement of the Commission's order; and from the decision of the lower court sustaining that order (227 Fed. 258) this appeal is taken.

The record is quite large, because, in order to avoid the presumptions incident to an incomplete record, it was necessary to file as an exhibit with the bill the entire transcript of evidence heard by the Commission. Little of this, however, is important here because out of the numerous questions involved only this one of discrimination was made the basis of the Commission's decision.

Examination of this transcript will be practically unnecessary, as the historical and physical facts upon which the case must be decided either appear in the opinions of the Commission and the court or will be stated in this brief, and not denied by opposing counsel.

There is involved, therefore, the single question as to the effect of these undisputed facts. As an aid to the court's convenient consideration of it, we shall endeavor, at the risk of appearing prolix, to take from the record and present in this argument all the facts essential to a complete understanding and correct decision of the controversy—with the invitation, of course, to counsel for appellee to supplement or criticise if we fall short of doing this.

loss to appellants is \$192,530 per annua, which is more than \$16,000 per month and over \$500 per day.

Assuming that the hearing of this agumnious he onpecially expedited it is hardly possible that the loss of the two companies can be less than \$100,000 by the time it is decided; and there is no possible theory muon which any of it can be recovered if the case shall be recovered.

In addition to this financial loss, there would be involved material expense to appellants and ground confinion and inconvenience to all railroads and shippers throughout the country that do business with Kanbrille if new tariffs, now ordered to be put in vincuid, upon reversal by the Supreme Court, he netrancie and the old system be uncontroverted.

C. C. Debbard, Chief Clerk of the Traffic Department, of the Lemisville & Nashville Bailroad (Impury in his affidavit, filed upon the original motion for a nonpowery restraining order, thus describes the nature of the neons sary advertisement of the new tariff and status the number of persons to whom it must be distributed.

He says that in order to make here purimented of said tariffs it will be necessary for the Louistica & Neshville Railroad Company and the Cauterile Chattasooga & St. Louis Railway to distribute them to all of their local freight agents, general Ericon and soliciting representatives, as well as to memoriting lines throughout the country generally, and that he has made investigation of the lists of pursuous to whom these distributions will have to in made, and

he says that such lists include approximately 1,900 persons." (Rec., Vol. I, p. 57.)

But what of the loss to the public caused by the suspension, if this court also should hold that the two roads are switching for each other and hence should switch for the Tennessee Central? We cheerfully answer this question.

It must be borne in mind that the only shippers interested are those whose industries are located upon the tracks of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, and that this proceeding does not relate to the non-competitive cars, for they are already freely switched.

It applies, then, only to the movement, between those industries and the point of interchange with the Tennessee Central, of cars which are to go out or come in over the Tennessee Central to points of destination, or from points of origin, which the L. & N. or N., C. & St. L. can reach at the same or a less rate. It is thus apparent that the shipper ordinarily need suffer no financial loss, for he can ship out or in over one of these two latter lines upon which his industry is located) at the same rate as over the Tennessee Central's, and, according to the evidence, can get equally as good, if not better, service.

Practically his only actual injury, then, arises in the case of the occasional inbound misrouted car, which by mistake comes in over the Tennessee Central instead of the road upon whose tracks the industry is located. In a case of this sort the contents of the car are drayed to

his industry, but even this rare occurrence does not ordinarily entail a financial loss, since the Tennessee Central, and not the consignee, pays the drayage charge, except where he made the mistake as to routing—a thing which practically never occurs.

In support of the above general statement of the situation, we call brief attention to the finding of the Commission itself, and to the testimony offered by the complainants themselves upon the hearing.

The Commission in its report says:

"The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville cause Nashville shippers little direct pecuniary loss. Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located."

There was a suggestion of possible, but largely speculative, disadvantage and inconvenience in connection with car shortages, consignors' preference of lines and milling-in-transit privileges, but even such imaginary cases were possible only in extremely few instances in comparison with the general volume of traffic.

As to the cases of misrouting, which alone furnish possible occasion for tangible monetary loss, we submit that the general statement of the Commission that "shipments are frequently misrouted" is misleading and not supported by the evidence if the word "frequently" is to be given its usual meaning, for the proof overwhelm-

ingly shows that, speaking relatively, instances of misrouting are extremely rare, and when they do occur, the cost of drayage is paid by the railroad where the misrouting is its fault.

Reference to certain illustrative testimony on this question may not be amiss—all of it from witnesses introduced by the Traffic Bureau of Nashville.

C. J. Bonner, furniture manufacturer, testified on direct examination that the existing switching rules had caused drayage or switching loss "a few times." (Rec., Vol. II, p. 67.) On cross-examination, he admitted that during a period of ten or eleven years, in which his shipments amounted to 2,400 cars, he only knew of two instances when this had occurred.

E. S. Morgan, a merchandise broker, testified (Rec., Vol. II, p. 95) that during a period of seven years, where the shipments aggregated from 4,900 to 5,600 cars, there were only five instances where he suffered loss on account of drayage, and it appears that of those instances only one or two of them were chargeable to the switching rules.

R. H. McClellan, a grain merchant, testified (Rec., Vol. II, p. 125) to suffering occasional slight inconvenience, but stated that in a period of eight years, involving the handling of 12,000 cars, he had had no material trouble with the switching rules.

Practically the same admissions were obtained on the cross-examination of the other witnesses.

IV.

The Merits.

While not directly involved in the hearing of this motion it is not irrelevant to here add to the allegations of the motion at least a statement of the issue. It is proper first to state in explanation of the large record that the reasonableness of the switching charge for non-competitive freight, and divers other questions of more or less moment, were involved in the trial below, but all of these questions are eliminated upon this appeal except the single one of discrimination, for the lower court rested its decision solely on that ground. See the assignment of errors (Rec., Vol. I, p. 84).

We are familiar with this court's holding in various cases that the courts will not review the Commission's findings of fact, and that this applies to the fact of discrimination as well as of the reasonableness of a rate, but this rule does not cover a case where the facts are undisputed and yet the conclusion therefrom involves an error of law. The trial court in its opinion (Rec., Vol. I, p. 61) concedes that "a conclusion which plainly involves, under the undisputed facts, an error of law" is reviewable by the courts.

Here, as stated, the facts are undisputed, and it is practically needless to go beyond the court's opinion to get all of them. The lower court and the Commission

found that these facts constitute a switching by one of the appellants for the other-a facility which each must also furnish to the Tennessee Central. We insist that as the two roads had actually in 1896 jointly acquired, under a 99-year lease from the holding company, the union station and principal terminal facilities, paying therefor nearly three million dollars; and as they in 1900, before the Tennessee Central came to Nashville, had by contract exchanged trackage rights over their individually owned terminal tracks outside of the jointly owned yards (a thing necessary to the proper enjoyment of the union station and other central jointly owned facilities, because the principal yards were located there), they had a perfect right, without opening the terminals to other roads, to operate those joint terminals, either separately or jointly.

They elected, as a matter of convenience (to prevent unnecessary interference of their switch engines and trains) and as a matter of economy, to jointly employ the superintendent, train crews, etc., and operate them jointly under a contract whereby at the end of the month each pays to the joint agency as nearly as possible the actual cost of the service it received. Solely because of this arrangement the Commission and court say that they are switching for each other, and hence must switch the competitive cars of the Tennessee Central over their terminals.

It means that they must with their own engines and crews handle the Tennessee Central's car over their terlocal destinations, at a uniform charge of \$2.00 per car; this switching charge being absorbed on competitive traffic by the railroad having the transportation haul, while on non-competitive traffic it was paid

by the shipper or consignee.

"On August 15, 1900, shortly after the completion of the terminal facilities by the Terminal Company, the Louisville & Nashville and the Nashville & Chattanooga, being then the only two railroads entering Nashville, as a matter, primarily at least, of economy in the operation of terminal facilities, entered into an agreement under which they have since maintained and operated joint terminal facilities at Nashville, the effect of which is the underlying matter of controversy in this case. The essential provisions of this agreement are as follows:

"The two railroads created an unincorporated organization, styled in the agreement the 'Nashville Terminals,' and hereinafter called the Terminals, for the maintenance and operation of terminals at Nashville, embracing in such organization all the properties, buildings, tracks, and terminal facilities leased to them by the Terminal Company, together with certain other individually owned tracks which they severally contributed and attached to said terminals, consisting of 8.10 miles of main and 23.80 miles of side track contributed by the Louisville & Nashville, and 12.15 miles of main and 26.37 miles of side tracks contributed by the Nashville & Chat-The agreement further provided: (a) That the entire properties thus included within the Terminals should be maintained and operated, as such, under the management of a Board of Control, consisting of a Superintendent of the Terminals and

the General Managers of the two railroads, the operation of the Terminals to be under the immediate control of the Superintendent, who should appoint, subject to the approval of the Board, a Station Master, Master of Trains, and other designated officers, each of whom should have a staff of employes for the conduct of his department; (b) that the expenses of maintaining and operating the Terminals should be apportioned between the two railroads as follows: passenger service expenses (including all expenses of the union passenger station) in proportion to the number of passenger train cars and locomotives handled by the Terminals for each; siding expenses (to be ascertained on the basis of the number of hours that yard engines were engaged in switching to and from house and private sidings, and bulk or team tracks, as compared with the total number of hours that they were engaged in all classes of service) in proportion to 'the total number of cars placed on and withdrawn from house and private sidings, bulk or team tracks (by the Terminals) for each' railroad; train yard expenses, in proportion to the number of all cars and train locomotives received and forwarded by the Terminals for each; and general expenses, in proportion to the average percentages of the three other expense accounts; provided, that before such apportionment of expenses, there should be deducted from the aggregate expenses all moneys received by the Terminals for room rents, restaurant and news-stands privileges, etc., and services rendered any other person; (c) that the separate freight stations and appurtenant tracks of each railroad and the tracks allotted to each for receiving and delivering bulk freights,

should be maintained and operated by the Terminals for each of them direct, and the expenses thereof charged directly to each; a like provision being made in reference to the operation of the terminal roundhouse for the Louisville & Nashville alone: (d) that each railroad should set apart and allot to the use of the Terminals, switching engines adequate to the work of switching and pulling trains in and about the Terminals, corresponding in efficiency to the proportion of work performed for each; which should be maintained and kept in repair by the Terminals and for which it should pay the railroads four per cent annually upon their valuation at the time of allotment; and (e) that the rights, privileges and uses of all the property in the Terminals by the respective railroads, should be 'the same, equal and joint, and none other,' except only as to the bulk tracks, etc., operated for each separately.

"In operating under this agreement all the work of breaking up incoming freight trains of both railroads after they come into the central yards of the Terminals, and of collecting and making up outgoing freight trains for both railroads before they leave such yards, is performed by the Terminals. when an incoming freight train comes in on the line of either railroad into the central yards, all cars destined for industries located within the Terminals, either on the tracks jointly leased to the Terminal Company or on the tracks of either railroad otherwise included within the Terminals, are switched by the Terminals to such local destination, without distinction as to the particular tracks on which such industries are located; and, conversely, freight cars loaded at industries located on any of such tracks for

transportation out of Nashville on the line of either railroad, are switched by the Terminals to the central yards and made up into the outgoing train. In other words, the entire switching service in reference to either the incoming or the outgoing freight trains of each railroad to and from the separate and joint tracks of both railroads, is performed by the Terminals, acting as joint agent of the two railroads under the Terminal agreement. However, in accordance with this agreement, the only direct charge for such switching service is, in effect, made against the railroad having the transportation haul, in accordance with the provision that the siding expenses shall be apportioned between the two railroads in proportion to 'the total number of cars placed on and withdrawn from house and private sidings, bulk and train tracks, for each of the parties.' Obviously, however, this apportionment of siding expenses does not represent the entire actual cost incident to the switching services, as it does not include any part of the general expenses and fixed charges of the Terminal, which are apportioned between the two railroads upon a different basis, as provided by the agreement.

"The interchange track between the Nashville & Chattanooga and the Tennessee Central at Shops Junction is within the switching limits of the Terminals under this agreement, but the interchange track between the Lousville & Nashville and the Tennessee Central at Vine Hill is outside of these switching limits.

"On December 3, 1902, the Terminal Company, the Louisville & Nashville, and the Nashville & Chattanooga entered into an agreement, reciting that the two leases of April 27, 1896, from the railroads to the Terminal Company had been cancelled and abrogated; modifying the lease of June 25, 1896, from the Terminal Company to the railroads, so that thereafter it should only include certain tracks and parcels of land that had been directly acquired by the Terminal Company, and should be otherwise rescinded and abrogated and the properties of the railroads otherwise respectfully restored as they were prior to the lease, subject only to the mortgage that had been executed thereon by the Terminal Company to secure its issue of bonds; reducing the term of the lease to 99 years; and modifying in certain respects the provisions of the lease as to the rental to be paid.

"The Terminal tariffs of both railroads publish service by the Terminals and provide that 'there is no switching charge to or from locations on tracks of the Nashville Terminals, within the switching limits, on freight traffic, carloads, from or destined to Nashville' over either railroad, 'regardless of whether such traffic is from or destined to competi-

tive or non-competitive points.'

"The Tennessee Central entered Nashville in 1901-2, after strong opposition from the Louisville & Nashville, and leased its terminal facilities, consisting of a passenger station, freight depots, tracks, etc., from another Tennessee railroad terminal corporation that had been organized in 1893.

"Prior to 1907 neither the Louisville & Nashville or the Nashville & Chattanooga would interchange traffic with the Tennessee Central at Nashville or any other point of connection. In that year, however, they both began to interchange with the Ten-

nessee Central at Nashville all non-competitive traffic, exclusive of coal traffic, at the rate of \$3.00 per car; non-competitive Nashville traffic being defined as traffic between Nashville and points reached only by one railroad into Nashville or points served by two or more railroads into Nashville for which, however, one railroad can maintain rates which the others can not meet. This interchange of non-competitive traffic between both the Louisville & Nashville and the Nashville & Chattanooga was and is effected by the connection between the Tennessee Central and the Nashville & Chattanooga at Shops Junction, there being no direct connection between the Tennessee Central and the Louisville & Nashville.

"On December 9, 1913, upon complaint by the City of Nashville, and others, the Commission found that the Louisville & Nashville and the Nashville & Chattanooga switched all traffic for each other at Nashville but refused to switch coal to and from the Tennessee Central except at a prohibitive rate, thereby unjustly discriminating against coal to and from the Tennessee Central in favor of coal to and from each other's lines, and entered an order requiring the Louisville & Nashville and the Nashville & Chattanooga to abstain from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the Tennessee Central at Nashville from that maintained with respect to similar shipments from and to their respective tracks. The Louisville & Nashville and the Nashville & Chattanooga thereupon filed a petition in this court seeking to restrain the execution of this order and applied for an interlocutory injunction, which

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

Louisville & Nashville Railroad Company et al., appellants,

No. 711.

UNITED STATES OF AMERICA ET AL., APpellees.

SUGGESTIONS IN OPPOSITION TO AN APPLICATION FOR SUSPENSION OF AN ORDER OF THE INTERSTATE COM-MERCE COMMISSION.

The complaint under which the order here attacked was made by the Interstate Commerce Commission was filed by the city of Nashville and the Nashville Traffic Bureau against the Louisville & Nashville Railroad Co., the Nashville, Chattanooga & St. Louis Railway, and the Louisville & Nashville Terminal Co. The Tennessee Central Railroad Co. and its receivers and the Nashville Terminal Co. were made defendants. As the Louisville & Nashville Terminal Co. is merely a nominal party, the word "appellants" as used in this brief refers to the L. & N. and the N., C. & St. L. alone. By the complaint filed with the Commission the rates, rules,

and practices of the carriers named as defendants affecting the interchange and switching of interstate traffic in the city of Nashville were attacked as unreasonable and unjustly discriminatory.

STATEMENT OF FACTS.

Prior to August 15, 1900, the Louisville & Nashville and Nashville, Chattanooga & St. Louis operated their respective terminals independently. Each road switched for the other at a charge of \$2 per car, but on competitive traffic the switching charge was absorbed. Since August 15, 1900, all their terminal facilities, including the terminal buildings, tracks, and other facilities leased by them jointly from the Louisville & Nashville Terminal Co., except their individual team tracks and separate freight depots, have been maintained and operated jointly. The arrangement is called the " Nashville Terminals" and is managed by a board of three, composed of the general managers of the two roads and a superintendent of terminals. The total expense of maintenance and operation is apportioned monthly between the two roads on the basis of the total number of cars and locomotives of all kinds handled for each.

The Tennessee Central, which entered Nashville in 1901–2, after strong opposition from the Louisville & Nashville, leases its terminal facilities, consisting of a passenger station, freight depots, shops, main, side, and spur tracks, from the Nashville Terminal Co.

The appellants, through their unincorporated joint agent, the "Nashville Terminals," switch for the Tennessee Central any traffic for which neither of them competes at \$3 per car, but traffic for which either of them competes they refuse to permit the " Nashville Terminals" to switch for the Tennessee Central except at prohibitive rates. The commission, after a full hearing, made an order requiring appellants to switch for the Tennessee Central both competitive and noncompetitive traffic on the same terms on which they switch such traffic for each other. The order also required the Tennessee Central to reciprocate and to desist from certain practices in the matter of the switching and interchange of interstate traffic, but that company is not complaining of the order of the Commission.

The motion for an interlocutory injunction and motions by the United States and the Interstate Commerce Commission to dismiss were heard by Circuit Judge Warrington and District Judges Sanford and McCall, and after full consideration those judges announced the conclusion that the motion for an interlocutory injunction should be denied and the petition dismissed. [Rec., vol. I, p. 59.] After the judges had filed their opinion, but before the decree was entered, the appellants made a motion for an injunction pending the appeal, and the judges inserted in their decree a provision staying the order of the Commission until this court should act upon a motion for such injunction, provided the appellants should perfect their appeal and present

their petition and motion to this court for the injunction within 30 days from the date of the decree, which they have done. Only two of the three judges concurred in this modification of the decree.

ARGUMENT.

Counsel for appellants state that the sole ground on which they attack the order of the Commission in this court is that the finding of the Commission that appellants switch for each other is an erroneous conclusion of law.

While this court has the inherent power to issue any writ necessary to the exercise of its jurisdiction, we insist that this is not a proper case for the exercise of that power.

I.

THE EXACT QUESTION INVOLVED UPON THIS APPEAL HAS BEEN DETERMINED BY THIS COURT.

In Louisville & Nashville R. Co. v. United States, 238 U. S. 1, this court had occasion to consider an order of the Interstate Commerce Commission requiring appellants to switch coal for the Tennessee Central at Nashville upon the same terms on which they switched coal for each other, and the court, referring to the reciprocal arrangement here involved, at page 18, said:

Disregarding the complication arising out of joint ownership and the fact that each of the appellants switches for the other, it will be seen that the Commission is not dealing with an original proposition, but with a condition brought about by the appellants themselves. Under the provisions of the commerce act [24 Stat. 380] the reciprocal arrangement between the two appellants would not give them a right to discriminate against any person or "particular description of traffic."

But counsel for appellants say all the facts were not then before this court. If the facts were not before the court, it was the fault of appellants, who brought the case here upon the findings of the Commission without the evidence. The Commission in that case found that the appellants switched for each other without finding all the facts upon which that conclusion was based, and the appellants, choosing to accept that conclusion as correct, invoked the jurisdiction of this court to determine its legal effect. In that case this court commended the appellant for not making the evidence heard by the Commission a part of the record, but we may assume that in doing so the court did not anticipate that the failure to make that evidence a part of the record would later be used by the appellants as an excuse for reopening one of the questions presented in that case. Certainly, the appellants, having failed to avail themselves of the opportunity presented in that case to bring before the district court all the facts now presented, are not in a position to ask a suspension of the order of the Commission here involved pending the determination by

this court of the legal effect of facts, which they might have brought before this court in the former case. In that case this court, at page 10, said:

The railroad companies did not offer all of the evidence which was considered by the Commission; and on this appeal they do not include in the record all of the hundreds of pages of testimony which had been submitted to the Commission; but—conceding that the evidence was conflicting and tended to support the findings of the Commission—they insist that the facts found were insufficient in law to sustain the orders which were made.

The appellants did, therefore, in that case concede that the evidence tended to support the finding of the Commission, which they quote on page 23 of their brief, and which they now say was incorrect, although, so far as appears, all the facts which now appear in this record appeared in the record before the Commission in that case.

II.

THE ORDER OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The ultimate finding of the Commission is the finding of unjust discrimination, and that finding, although based on undisputed evidence, is a finding of fact. *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320. The basis of that finding is the finding that appellants switch for each other, and that finding appellants insist is not supported

by substantial evidence. The question is a simple one. The appellants have pooled their terminals and have placed the operation of these terminals in the hands of their unincorporated joint agent, called "Nashville Terminals," which switches for each of them. The sole question is whether or not the appellants by this device can avoid the charge of unjust discrimination, which it is conceded would exist but for the creation of the joint agency. This question was answered in the negative by the Commission and by the judges below. The latter said [Rec., vol. I, p. 70]:

That each railroad does not separately switch for the other, but that such switching operations are carried on jointly is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act and its remedial purpose defeated by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done rather than in the particular device employed or the names applied to those engaged in it.

The Commission had jurisdiction to determine the question, and three judges having found not merely that there was substantial evidence to support the conclusions of the Commission but that its conclusion was correct, there is a strong presumption in favor of the correctness of that conclusion, es-

pecially in view of the fact that appellants conceded the correctness of a similar finding in Louisville & Nashville R. Co. v. United States, 238 U. S., 1.

Each of the appellants "contributes" its separately owned tracks to the "Nashville Terminals," and whatever trackage rights are created are given to that joint agent of the appellants. The appellants either switch for each other or the "Nashville Terminals" switches for each, and that is in effect what the Commission and the district court found. If the "Nashville Terminals" be treated as a separate entity it must treat all carriers and shippers alike, and must switch for the Tennessee Central on the same terms on which it switches for appellants.

III.

THE "IRREPARABLE INJURY" CLAIMED BY APPELLANTS
TO HAVE RESULTED FROM THE COMMISSION'S ORDER
IS SPECULATIVE AND RESTS UPON NO FACTS OF RECORD.

A majority of the three judges, in granting the temporary stay until this court could act upon this motion, found that the appellants would suffer irreparable injury if the order of the Commission should take effect and the decree appealed from should finally be reversed, and that it did not "clearly appear" that any "particular individuals" would suffer material injury from a temporary stay of the order until appellants could perfect their appeal and apply to this court for a stay. This implies, however, that the public would suffer

material injury from a longer stay. The irreparable injury claimed is the diversion of traffic to the Tennessee Central. The claim is that the freight revenues from the traffic which would be so diverted amount to \$16,000 per month. Of course this is purely speculative, but assuming that the estimate of \$192,000 per year represents the probable loss in freight revenues from the removal of the unjust discrimination which the Commission and the three judges have found to exist, the appellants in the 12 years since the Tennessee Central entered Nashville, assuming conditions to have been substantially the same during all that time, have received more than \$2,000,000 in freight revenues which should have gone to the Tennessee Central. If such a large volume of traffic would be diverted it must be assumed that it would be because of some substantial advantage in service or in some other respect which would accrue to the public. The advantage to be gained from fair competition can never be accurately estimated. unincorporated entity called the "Nashville Terminals" refuses to switch for the Tennessee Central, except at prohibitive rates, any traffic which might have come in or which might go out over either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis, thus stifling competition. The object of the order of the Commission, which the three judges have found to be valid, is to restore competition at Nashville, and the statement of ap-

pellants as to the large amount of traffic which would be diverted to the Tennessee Central if the order should be put into effect shows that the order would have the effect intended. In view of the fact that the city of Nashville subscribed \$1,000,000 to the stock of the Tennessee Central [Rec., vol. II, p. 285] in order, as we may assume, that the shippers of that city might have the benefit of the competition of that line with the lines of appellants, which are under a common control, it can not be assumed that such competition would not be of substantial value to the shipping public. Besides, the interests of the Tennessee Central can not be ignored, and there can be no doubt that the loss of appellants would be the gain of that carrier. The Tennessee Central, it is true, was not a complainant before the Commission, but the city of Nashville and the Nashville Traffic Bureau represented the interests of that line as against its codefendants just as clearly as they represented the interests of shippers, and unjust discrimination against that carrier was found to exist. Whatever tends to build up the Tennessee Central and to make it able to serve the public more efficiently is a matter of vital importance to the people of Nashville, and it will not do to say that because the appellants have for more than 12 years wrongfully diverted a large volume of traffic from the Tennessee Central no harm can come from permitting them to continue to do so for another 12 months or possibly longer.

If the Tennessee Central had received the \$2,000,000 of revenue which the appellants say they have diverted from that line it may be that the road would not now be in the hands of receivers, and that the people of Nashville would have a line which would be able to compete much more effectively with appellants than the Tennessee Central is now able to do. The finding of the Commission and of the three judges, in effect, that the Tennessee Central is entitled to the \$16,000 per month which appellants say would be diverted to that line by the order of the Commission certainly shifts the burden of proof, and as the Tennessee Central, if the judgment be affirmed, will have been wrongfully deprived of that revenue for 12 years, amounting to more than \$2,000,000, the appellants ought to be required to take the risk pending the appeal rather than to impose upon the Tennessee Central the risk of that additional loss. The Tennessue Central and the people of Nashville would be just as powerless in the event of affirmance to establish the damage which they might suffer by the suspension of the order of the Commission as the appellants would be to establish their damage if the order should go into effect and the order of the Commission should finally be held to be void. The bond given by appellants, therefore, is of no real value.

But the real test of the loss which the appellants would suffer is not the gross revenue from the business which would be diverted, but the net revenue, and this, it is estimated, would be about \$100,000 per year. [Rec., vol. I, p. 45.] If appellants make a profit of \$100,000 per year on the business which the order of the Commission would divert to the Tennessee Central, that line, it must be assumed, would realize a like profit from that business, and it must also be assumed that the shipping public would gain some material advantage by the diversion of the traffic, since otherwise the traffic would not be diverted. But we repeat that the claims made by appellants regarding possible financial injury are purely speculative and rest upon no facts of record.

IV.

THE POWER OF COURTS TO SUSPEND ORDERS OF THE INTERSTATE COMMERCE COMMISSION IS RESTRICTED WITHIN NARROW LIMITS.

The act of October 22, 1913, 38 Stat. L., 219, 220, which abolished the Commerce Court, provides:

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application.

When such application as aforesaid is presented to a judge he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: Provided. That in cases where irreparable damage would otherwise ensue to the petitioner a majority of said three judges concurring may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than 60 days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in

every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for.

A comparison of these provisions with sections 263 and 266 of the Judicial Code, regulating the granting of restraining orders and injunctions in other cases, shows that Congress intended that greater care should be exercised in the matter of granting restraining orders and injunctions in suits to annul orders of the Interstate Commerce Commission than in suits of any other kind. section 266 of the Judicial Code, applying to restraining orders and injunctions in suits to annul orders of state commissions, is more restrictive than section 263, which applies to restraining orders in suits between private citizens, the provisions relating to restraining orders and injunctions in suits to annul orders of the Interstate Commerce Commission are still more restrictive than the provisions of section 266. Under that section a single judge may grant a restraining order to remain in effect until the decision of three judges upon the motion for an interlocutory injunction, but in the case of an order of the Interstate Commerce Commission a temporary stay or suspension of the order can be granted only by a majority of the three judges, and then only for 60 days. In addition, the order must contain a specific finding "based upon evidence submitted to the judges making the order and identified by reference thereto"

that irreparable damage would result to the petitioner "and specifying the nature of the damage." It is true that the judges may, at the time of the hearing, continue the temporary stay or suspension in whole or in part until decision upon the application, but there must again be a like finding based upon evidence identified by reference thereto and specifying the nature of the irreparable damage. These provisions clearly indicate that it was the intention of Congress that orders of the Commission should not be lightly stayed or suspended pending action upon the application for an injunction, and that when a majority of three judges, upon full consideration of the application for an injunction, had determined that the Commission's order was supported by substantial evidence, that order should take effect. It is manifest that while Congress desired to guard against arbitrary action by the Commission, it considered that the approval of the orders of the Commission by a majority of three federal judges, at least one of them being a circuit judge, would furnish such a strong presumption in favor of their validity that such orders could safely be permitted to take effect pending an appeal to this court. It is clear that Congress intended that the courts should not interfere wih the orders of the Commission to any greater extent than might be necessary to give reasonable protection against arbitrary action or to prevent the Commission from exceeding its jurisdiction. We are not dealing here with a case in which the jurisdiction of the Commission is questioned, but with a case where the sole question is whether or not there was substantial evidence to support the finding of the Commission. The three judges, neither in their opinion nor in the order granting a temporary stay until this court should act upon the motion now made, have indicated the slightest doubt of the correctness of their conclusion. Indeed, the court went beyond what was required to uphold the order attacked and expressly approved the conclusions of the Commission.

Counsel for appellants seem to suppose that the parties to this appeal are the carriers on the one side and the shippers on the other, losing sight entirely of the fact that the injunction sought is against the Interstate Commerce Commission, a public administrative tribunal, whose decision here involved has already been reviewed and approved by three federal judges sitting in banc. Even if there be discretion to stay the order of the Commission after it has been thus approved, that discretion ought not to be exercised except in a very clear case.

V.

AS A GENERAL RULE THIS COURT WILL NOT MAKE AN ORDER TO MAINTAIN THE EXISTING STATUS UNLESS THAT STATUS EXISTS BY VIRTUE OF SOME ACT OF THE CHANGELLOR.

Where the chancellor has granted an interlocutory injunction the status thus created is one which exists by virtue of an act of the chancellor, and the same is true of the status which may exist by

virtue of the dissolution of an interlocutory injunction. While the status which may exist by reason of the dissolution of the injunction may be the same status which existed before any action was ever taken by the chancellor, it nevertheless exists by virtue of the chancellor's action in dissolving the injunction.

In Chegary v. Scofield, 5 N. J. Eq., 525, 530, where the question was as to the power of the New Jersey Court of Errors and Appeals to keep in force pending an appeal an injunction which had been dissolved by the chancellor, which restrained the sheriff from delivering a deed to the purchaser at a sheriff's sale, it was insisted for respondents that there was a distinction between the power of the court to restrain them from doing something which they derived their authority to do from the chancellor, and the power to restrain them from doing a thing which they were at liberty to do before any bill was filed, and the court held that while the distinction might be a sound one it had no application to the facts of that case. Chief Justice Hornblower, with whom a majority of the justices concurred, said:

The argument is that as the chancellor only dissolved the injunction, the sheriff was at liberty to act just as he might have acted before the bill was filed. It was just as if no injunction had ever been issued; that he was not executing any decree; he was not proceeding in the cause; he was not doing anything

for the doing of which he derived his authority from the chancellor.

It seems to me the inconclusiveness of this argument must appear by simply asking the question whether, after this bill was filed and after the chancellor had granted the injunction, the sheriff could have delivered the deed without the chancellor's permission? Certainly he could not; and then it is by the authority and permission of the court of chancery, and in virtue of the chancellor's judicial decision, that he acts in the matter and delivers the deed. It is this very decree that the appellant complains of in this court, and he comes here to get it reversed.

In every case cited by counsel for appellants in which either the lower court or this court granted a stay pending appeal there had been a restraining order or interlocutory injunction in effect in the lower court at some time prior to the decision appealed from, and after diligent search we have been unable to find any ease in which any court has granted an injunction pending an appeal from an order dismissing a bill for an injunction where no injunction or restraining order had been granted in the lower court prior to the final decision of the case.

In Leonard v. Ozark Land Company, 115 U. S., 465, 468, this court, by Mr. Chief Justice Waite, said:

This court no doubt has the power to modify an injunction granted by a decree below in advance of a final hearing of an appeal on its merits. An application to that effect was made to us at the October Term, 1878, in the case of the Sandusky Tool Co. v. Comstock [not reported], and finding that such a practice, if permitted, would oftentimes involve an examination of the whole case and necessarily take much time, we promulgated the present equity rule 93, which is as follows:

"When an appeal from a final decree in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying an injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party."

The rule there quoted is now equity rule No. 74. The court did not provide for the granting of an injunction pending appeal where none had been granted, and it must have had a reason for not doing so. Since the court by the adoption of that rule was seeking to avoid an examination of the whole case upon such motions, it was just as important, if the two cases are governed by the same principle, to provide for the case where no injunction had been granted by the chancellor as it was to provide for a case where an injunction had been dissolved, and the fact that the former case was not provided for indicates clearly that it was the

view of this court that such an application should not in any case be considered.

To dismiss a bill for an injunction after full hearing, and without any expression of doubt as to the correctness of the conclusion that the petitioners are not entitled to an injunction, and yet by the same decree to grant an injunction pending an appeal would be an anomaly in the law, and for that reason, no doubt, equity rule No. 74 makes no provision for such a case. The failure to make provision for such a case indicates at least that the case which would warrant such anomalous action must be most unusual.

This court has the inherent power recognized in section 262 of the Judicial Code to issue any writ necessary to make its jurisdiction effectual. If it appears that the subject matter of the litigation may be destroyed pending the appeal or that the right of appeal will be of no substantial value, if the existing status is not continued pending the appeal, the court may make an order maintaining the status quo. The mere fact, however, that the appellant may suffer substantial financial loss pending the appeal if the status quo is not maintained furnishes no reason for maintaining the existing status if the right sought to be established by the appeal is a continuing one and would be of great value for the future. In such a case the jurisdiction is not dependent on the preservation of the existing status pending the appeal.

That writs of *supersedeas* will be granted by this court only in exceptional cases is shown by what was said *In re McKenzie*, 180 U. S., 536, 549. In that case the court said:

Although the issue of the writ is not ordinarily required there are instances in which it has been done under special circumstances and in furtherance of justice.

This case is quite different from the case of Louisville & Nashville R. Co. v. Siler, 186 Fed., 176, 203. In that case a temporary restraining order was in effect when the district court acted upon the application for an interlocutory injunction, and that order was kept in effect by the district court pending an appeal denying an interlocutory injunction, but only upon condition that the appellant pay into court the difference between the existing rate and the rate prescribed by the suspended order of the railroad commission of Kentucky, and no objection was made to that part of the decree. In that case the appellant would have had no remedy for the loss suffered in the event of reversal if the order had gone into effect, while the shippers were given a reasonably adequate remedy in the event of affirmance by requiring the difference between the two rates to be paid into court. Besides, that was a suit to annul an order of a state railroad commission, to which a different statute applied.

In Omaha & C. B. St. Ry. Co. v. Int. Com. Com. 230 U.S., 582, in which this court granted a stay pending the appeal, the Commerce Court had dissolved an interlocutory injunction, and this court restored that injunction pending the appeal. sides, that was a case in which the jurisdiction of the Commission was in question, and not a case where the question was merely as to whether or not there was substantial evidence to support the order of the Commission. This court was called upon to determine whether or not the Commission had jurisdiction over street railways, and to make the jurisdiction of this court effectual the court thought it proper to restrain the Commission from exercising jurisdiction pending the appeal, the question being a new one.

In Florida East Coast Ry. Co. v. United States, 234 U. S., 167, where the jursdiction of the Commission was not in question, the motion for a suspension of the order of the Commission pending appeal was denied, although a preliminary injunction granted by the Commerce Court had been vacated. No opinion was delivered upon that motion, however.

It is not material that the effective date of the Commission's order was extended, in order that the three judges might have time, without embarrassment, to act upon appellants' motion for an injunction. Nor is it material that appellants, by reason of that fact, did not press their motion for a tempo-

rary restraining order until after the three judges had denied the injunction.

Now that the three judges have acted and have so strongly concurred in all the findings of the Commission, there ought to be no further stay.

CONCLUSION.

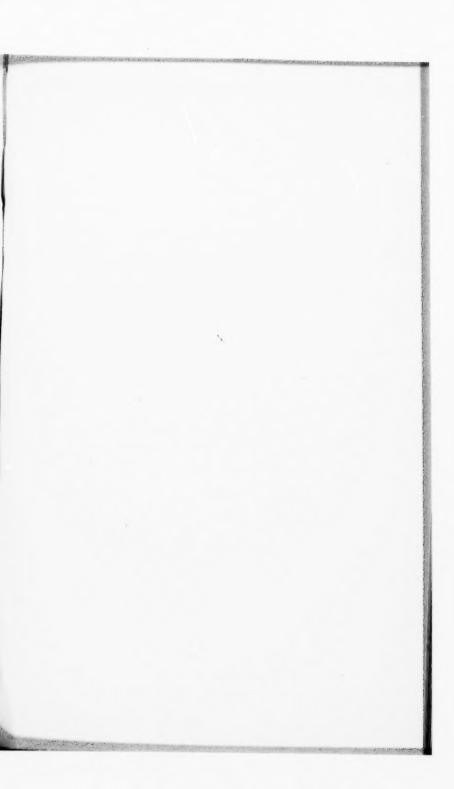
Congress has shown so clearly its intention that an order of the Interstate Commerce Commission which has been found by three federal judges sitting in banc to be valid should be permitted to take effect according to its terms in a case where there is no doubt as to the jurisdiction of the Commission, the stay granted by two of the three judges who presided in this case, after all three of those judges had found that the Interstate Commerce Commission was clearly correct in its conclusions and that its order was valid, should be dissolved. Section 262 of the Judicial Code gives to district courts the power to issue such writs as may be necessary to the exercise of their jurisdiction, but does not give such courts power to suspend orders of the Commission which they have declared to be valid. The court of three judges is created for a special purpose, and it has only such powers as are specifically conferred. The power of the court to grant a restraining order is limited to an order which does not extend beyond the time of its decision upon the application for an interlocutory injunction. Congress has guarded this with such great care that there is no room for doubt.

We ask that the petition and motion for a suspension of the order of the Interstate Commerce Commission pending the appeal be denied.

Respectfully submitted.

Joseph W. Folk,
Edward W. Hines,
Counsel for Interstate Commerce Commission.

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SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1916.

No. 290

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., APPELLANTS,

Versus

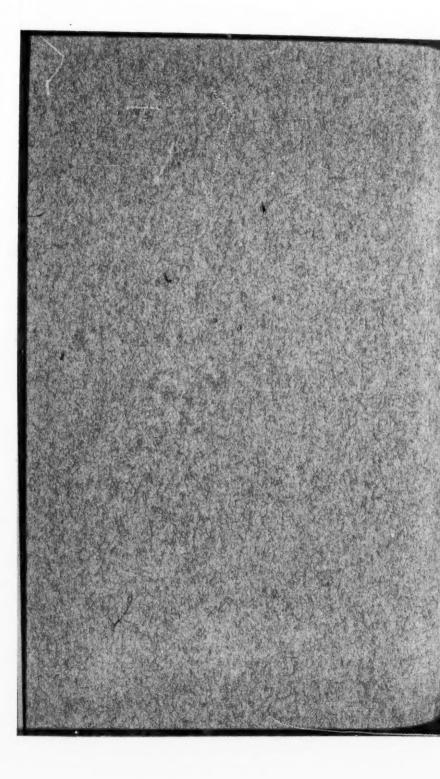
UNITED STATES OF AMERICA, ET AL., APPELLEES.

Appeliants' Reply Brief on Motion for an Order Maintaining Status Quo.

EDWARD S. JOUETT,
Solicitar for Appellants.

H. L. STONE, W. A. COLSTON, CLAUDE WALLER, Of Counsel.

Louisville, Ry., Nov. 94, 1915.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 711.

LOUISVILLE & NASHVILLE	RAILROAD	Сом-	
PANY, ET AL.,		*	Appellants,
versus			

United States of America, et al., - Appellees.

APPELLANTS' REPLY BRIEF ON MOTION FOR AN ORDER MAINTAINING STATUS QUO.

In this reply to appellees' brief upon the motion for an order maintaining the *status quo*, the appellants will discuss the various propositions put forth by the appellees in the order of their presentation in the appellees' brief.

I.

Has the Exact Question Involved on this Appeal Been Decided by this Court?

As foretold in our original brief, appellees insist that the question here involved is foreclosed by this court's decision in what is known as the Nashville Coal Case (238 U. S. 1). This is an evasion of the present contest and the raising of a collateral and improper issue as to the merits of which this record is necessarily silent, since there was no plea of former adjudication, nor other pleading, which would have given the appellants an opportunity to show the marked difference between the facts of the two cases.

The opinions, however, of the Commission, of the District Court and of this court, in that case, with slight reference to the record therein, show with sufficient definiteness how unlike they are.

There the principal contest related to certain important coal rates to Nashville from various mining points. As a manifestly subordinate addition to the main demand, there was a complaint that the L. & N. and N., C. & St. L. were discriminating against coal because under their tariffs they switched at Nashville all non-competitive freight for the Tennessee Central except coal. There was no complaint of a failure to switch competitive freight for the Tennessee Central (the issue in our case) on the ground that the two roads switched competitive freight for each other, or upon any other ground.

On the contrary, only the tariff relating to non-competitive freight (that is freight originating at or destined to points which the L. & N. and N., C. & St. L. did not reach) was in controversy, the claim being made that to switch non-competitive lumber, flour and other commodities and to refuse the same privilege to non-competitive coal was a discrimination against that commodity in violation of the Act.

The case was prepared and tried on these lines. The Commission, in its opinion, reduced the coal rates and also held the coal switching practice to be discriminatory. The railroad companies brought suit to enjoin the order and made application for an interlocutory injunction. Upon that preliminary motion the record of the proceedings before the Commission was not filed, because counsel conceived that the facts shown in the Commission's report itself did not as a matter of law justify the order. As to the switching question it was their opinion that even granting, for the sake of that motion, that the facts found by the Commission existed, the Commission had no authority over terminal movements because of the proviso to Section 3 of the Act, which seemed to withdraw from the Commission jurisdiction over terminals. court held that assuming the Commission found the facts correctly, which, as stated, the railroads for the purposes of that motion did not controvert, there was a discrimination which came within the prohibition of the Act. This question never having been decided by this court, an appeal was taken on October 27, 1914. But on February 23, 1915, this court rendered its opinion in Pennsylvania Company v. United States, 236 U. S. 351, holding that it was a discrimination covered by the Act for the Pennsylvania Company, at Newcastle, Pa., to switch competitive freight for three railroads and to refuse the same service to a fourth. On the strength of this case the switching branch of the Nashville case was affirmed.

What was the fact found by the Commisson which controlled both courts in their opinion and which appellees ask shall control this court in this case? It was that the two railroads operated their individually owned tracks independently and switched for each other. This was not involved in that case, was not argued by the railroads and was not necessary to the decision of the question of commodity discrimination involved in that case. That declaration of the Commission was contained in a half-page introductory statement of the historical facts, which were not connected, as at all essential, with the subsequent argument of the Commission upon the question of discrimination against coal and which did not begin to show all the facts bearing upon the true relations of the two companies.

In the Commission's ten-page opinion, there is no discussion of this question of switching for each other (so vital in our case) and no reference even to it, except the following brief statement in the above-mentioned introduction:

"Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operated independently each of the other or of the Terminal Company, and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the Terminal Company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis."

We know from the present record that these companies do not operate their individually owned tracks independently, and we believe it to be equally clear that the facts, which are uncontroverted, do not in law constitute a switching for each other.

That the District Court relied upon the above-quoted innocent statement is apparent from the quotations at page 24 of our brief. The same is true of this court's opinion. For example, referring to the Commission's order, this court said:

"It found that each switched for the other and both switched for the Tennessee Central, except as to 'coal and competitive business.'"

And in summing up its conclusion:

"In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business."

Appellees now seek to bind this court and appellants to the adoption of a certain alleged fact as true, whose existence is here in issue, because in another and different case the parties saw fit, on a preliminary motion, to test the sufficiency in law of such alleged fact without denying its existence. This position is wholly untenable.

II.

Is the Order of the Commission Supported by Substantial Evidence?

While the discussion of this question, being the meat of the whole case, comes in the final hearing rather than upon this preliminary motion, yet we will at this time briefly discuss the appellees' reference to it.

Counsel for appellees in considering the finding of the Commission of unjust discrimination, thus tersely states their whole case:

"The basis of that finding is the finding that appellants switch for each other, and that finding appellants insist is not supported by substantial evidence. The question is a very simple one. The appellants have pooled their terminals and have placed the operation of these terminals in the hands of their unincorporated joint agent called "Nashville Terminals," which switches for each of them. The sole question is whether or not the appellants by this device can avoid the charge of unjust discrimination, which it is conceded would exist but for the creation of the joint agency."

Under this important heading of their own making appellees offer no argument to show that what is done constitutes a switching for each other, but they raise another side issue—namely, that the arrangement at Nashville is a device to avoid the charge of discrimination; thereby conceding, as it were, that the arrangement would be lawful were it not a device designed to evade the law. There was not a scintilla of evidence in the record to show that this arrangement was a device

formed for the purpose of enabling each road to handle the cars of the other without handling those of the Tennessee Central. All the circumstances show exactly the contrary to be true.

1. The uncontroverted facts in this record, which indisputably disprove the unsupported statement of counsel that the existing arrangement between the appellants is a device, are numerous and they appear in the lower court's opinion (Vol. 1, pages 62-65) to which we invite this court's particular attention. They show that all the plans, negotiations, agreements, expenditures and final arrangements were completed a year and a half before the Tennessee Central was built to Nashville and were begun many years before that event, and that many other important results were purposed and achieved besides mere industrial switching. The following are some of these facts—all of them uncontroverted: The arrangement for joint trackage rights at Nashville between the two companies began as early as 1872 when the L. & N. acquired trackage rights for 99 years over some of the important terminal tracks of the other companies. This was long before the L. & N. had begun to acquire an interest in the N., C. & St. L.

In 1893, the appellants organized the Terminal Company with the purpose, as the lower court stated it, "to facilitate the construction of the proposed Union Station and other terminal facilities."

The Terminal Company acquired outright in its own name much valuable property, and on April 27, 1896, leased certain contiguous individually owned property from the two constituent companies. Its own acquisitions, together with these leasehold interests, constituted the ground upon which were constructed the Union Station and principal terminal yards which comprise over 31 miles of main and side tracks. The two companies furnished the money, namely \$3,000,000, for the construction of the Union Station and main terminals, work upon which was begun in 1898 and finished in 1900.

Immediately after the completion of these main terminals the two companies entered into a written agreement of date August 15, 1900, under which they contributed to the main terminals (which they already owned jointly by 99-year lease from the Terminal Company), all of their individually owned terminal tracks within the switching limits of Nashville for their joint use for a period of 99 years. The same agreement also, almost of necessity, provided for their joint operation of these joint terminals for all terminal purposes, upon such division of the expenses that each, at the end of the month, pays for the service it receives and hence, in effect, performs its own terminal service.

It is this terminal arrangement (thus gradually built up with great foresight and at enormous expense to the constituent companies, and embracing not merely this single incidental feature of handling cars to and from industries, but also all other terminal services including the making up, and breaking up, of all trains, both freight and passenger, the handling of through as well as local cars, the operation of the Union Station, and the performance of all other terminal operations), which counsel dispose of so cavalierly without other argument than the declaration that the whole thing is a "device to avoid the charge of unjust discrimination."

While the lower court nowhere suggested that any fact was proven which tended to show that this was a device, it was evidently influenced in its ultimate finding of a discrimination by the apprehension that to uphold the arrangement would enable other roads hereafter to carry on reciprocal switching "by the simple device of employing a joint agency to do such reciprocal switching." But here the court erred, as we think, both because each future case will be decided on its own facts and because there is much more involved at Nashville than the employment of a joint operating agency. Before that came the joint acquisition of the property, with its important vested rights and contractual obligations, the effects of which the court here largely nullifies when it orders either the discontinuance of the present joint uses and practices, or the admission of the Tennessee Central to an equal enjoyment of same—and the latter, forsooth not upon a proportionate contribution to the original cost, but for an insignificant switching charge, which in no way compensates for the loss of the road-haul revenue and the other unjust features of such a command.

If it be claimed that the final joint operating agreement was made after the coming of the Tennessee Central was foreseen, the answer is that the plans for it were begun nine years before, that the making of various joint arrangements calling for the joint expenditure of nearly three million dollars took place three years before, and that, upon the completion of the improvements in 1900, the two companies had become so indissolubly bound together in the ownership of the valuable main terminal facilities that this making of their remaining individually owned terminals also joint, in both ownership and operation, was practically necessary to the proper enjoyment of their previously acquired joint property, to say nothing of the manifest economy and convenience of such an arrangement.

2. Another cogent reason why this arrangement could not have been a device was the fact that in 1900 there was no law which permitted the Commission to require one railroad to unite with another, even in the making of a joint through route. Joint routes were altogether matters of contract until the Commission was given authority itself to make them by the amendments of June 29, 1906, and June 18, 1910, to Section 15 of the Act to Regulate Commerce.

Furthermore, there had been no cases up to that time which applied the principle of discrimination to terminal movements. The holding of the courts was precisely to the contrary and these decisions are still the law in the case of bona fide contracts such as we have here, though this court has held, under the amendments of 1906 and 1910, that the Commission now has power to prevent a naked discrimination even in connection with terminal movements. A glance at some of these cases is pertinent here, not only because they sustain the validity of the contracts of 1900 and those of the previous dates, but also because they show that there could have been no

need of any device at that early date to avoid the charge of discrimination in terminal practices.

In K. & I. Bridge Co. v. L. & N. R. R. Co., 37 Fed. 567, in which the K. & I. Bridge Co. sought and obtained from the Commission an order requiring the L. & N. R. R. Co. to interchange freight at a certain point of physical connection between the two roads, Circuit Judge Jackson, in declaring said order void because, among other reasons, it was a violation of the tracks and terminals proviso to Section 3 of the Act, expressly held that private contracts (such, for example, as the one between the L. & N. and N., C. & St. L. now under discussion) were not prohibited by the Act, saying:

"The third section prevents the making or giving of any undue or unreasonable preference or advantage to any firm, company, person, corporation, locality, or traffic, or the subjecting of any person, company, firm, corporation, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage; and by its second clause requires common carriers to afford all reasonable and proper and equal facilities for the interchange of traffic, and for the receiving, forwarding, and delivering of passengers and property between their lines and those connecting therewith, and prevents them from discriminating in their rates and charges between such connecting lines, but without requiring any such common carrier 'to give the use of its tracks and terminal facilities to another carrier engaged in like business.' Now, under this last limitation upon, or qualification of, the duty of affording all reasonable, proper and equal facilities for the interchange or for the receiving, forwarding, and delivering of traffic to and from and between connecting lines, it is clearly left open to any common carrier to contract

or enter into arrangements for the use of its tracks and terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving an undue or unreasonable preference or advantage to such lines, or of discriminating against other carriers who are not parties to, or included in, such arrangements. No common carrier can therefore justly complain of another that it is not allowed the use of that other's tracks and terminal facilities, upon the same or like terms and conditions which, under private contract or agreement, are conceded to other lines."

This doctrine was adhered to in an opinion by Circuit Justice Field in *Oregon Short Line & U. N. R'y Co.* v. *Northern Pacific R'y Co.*, 51 Fed. 465 (affirmed by the C. C. A. in 61 Fed.), where he said:

"The provision in the second subdivision of the third section of the Interstate Commerce Act, that a common carrier shall not be required to give the use of its tracks and terminal facilities to another carrier engaged in like business, is a limitation upon or qualification of the duty declared of affording all reasonable, proper and equal facilities for the interchange of traffic, and the receiving, forwarding and delivering of passengers and property to and from the several lines and those connecting therewith. It was so expressly held in the case above cited of Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. Rep. 571.

"It follows from this, as it was decided in that case, that a common carrier is left free to enter into arrangements for the use of its tracks or terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving undue or unreasonable preferences or advantages to such lines, or of unlawfully discriminating against other carriers. In making arrangements for such use by

other companies, a common carrier will be governed by consideration of what is best for its own interests. The act does not purport to divest the railway carrier of its exclusive right to control its own affairs, except in the specific particulars indicated."

And so in Little Rock & M. R. Co. v. St. Louis, I. M. & S. R'y Co., 59 Fed. 400, where the court, after discussing the proviso to Section 3 and the previous decisions on the subject, held among other things "that the fact that one connecting railway company has a contract for the interchange of interstate commerce freight, which involves the use of the receiving railway's tracks and terminal facilities, would not authorize a court of equity to compel the receiving railway to grant a like contract or concession to another connecting company."

This case was affirmed by the United States Circuit Court of Appeals for the Ninth Circuit in an opinion by Judge, now Justice, McKenna.

3. This court, as late as 1912, has distinctly approved the plan of independent companies combining for the purpose of controlling or acquiring terminals for their common but exclusive use. This is definitely declared in United States v. Terminal Railroad Ass'n of St. Louis, 224 U. S. 383, where the court, through Mr. Justice Lurton, at page 405, said:

"It can not be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too onerous, there would ordinarily re-

main the right and power to construct their own terminals. But the situation at St. Louis is most extraordinary, and we base our conclusion in this case, in a large measure, upon that fact."

It is true that this court in that case, to an extent, condemned the method of organization of the Terminal Railroad Association as a violation of the Sherman Act, and required it to be reorganized so as to provide a definite way for new railroads to be admitted into the company; but this finding was expressly made to rest upon the peculiar situation at St. Louis, which the court thus described:

"The result of the geographical and topographical situation is that it is, as a practical matter, impossible for any railroad company to pass through, or even enter St. Louis, so as to be within reach of its industries or commerce, without using the facilities entirely controlled by the Terminal Company."

This case came back to the Supreme Court on appeal from the order carrying out its mandate and the court in 1915, in approving the plan of reorganization under which other railroads could come in on equitable terms, reaffirmed the doctrine of the former opinion that, except in a peculiar case like that at St. Louis, it was lawful for independent carriers to combine for the purpose of obtaining terminal facilities. (236 U. S. 206.) But even in St. Louis the railroad desiring to come in did not do it for a switching charge but was required to pay its equitable proportion of the cost and maintenance of the property.

4. In this connection, as bearing upon the Commission's general idea of this Nashville situation, it is significant that the Commission in the Nashville Coal case got around this joint arrangement by taking as a precedent the action of the court in the above St. Louis Terminal Company case.

After announcing its conclusion that the practice of the L. & N. and N., C. & St. L. was unjustly discriminatory and declaring that they should be required to discontinue it, the Commission said:

"This disposition of the case is in consonance with the principle enunciated by the Supreme Court in U. S. v. Terminal R. R. Asso. of St. Louis, 224 U. S. 383."

Such a conclusion was unjustified both because the Commission has no power to administer the Sherman Act and because, if it had, the monopolistic geographical conditions existing at St. Louis did not exist at Nashville, where the Tennessee Central was not only not excluded but was doing business with extensive terminals of its own throughout the city, and had never made a complaint to Commission or court.

III.

Irreparable Injury.

Counsel disposes of the testimony of A. R. Smith and Chas. Barham, leading traffic officials of appellants, that the two companies would sustain a net loss of \$16,000 per month, if the Commission's order is put into effect, by declaring it to be "purely speculative"; but he does not point out any flaws in either the facts or the logic of their statements. Each shows the number of competitive cars of freight handled annually by the road he represents together with the net earnings thereon. It is then shown that the Tennessee Central connects with the Southern Railway system, and with the Illinois Central. The aggregate mileage of the Southern Railway and its allied lines is shown to be 10,171 miles and that of the Illinois Central 6,141 miles.

It will be understood that the freight under consideration is competitive freight, that is freight from or to points of origin or destination which the Tennessee Central and its allied lines can reach as well as the L. & N. and N., C. & St. L. It is further stated that the aggregate number of freight solicitors in the employ of the Illinois Central, Southern Railway, Queen & Crescent and Tennessee Central (not counting those of the Southern Railway's other allied interests) total 323, whereas the freight solicitors of the L. & N. and N., C. & St. L. aggregate 130. These 323 solicitors, scattered over 16,312 miles of railroad, to say nothing of their con-

nections, will have a chance at every car of freight going to Nashville, if it is known throughout the country that those lines can deliver upon the L. & N. and N., C. & St. L. terminals as well as can the owners of those terminals. · The rate being the same, this request for a division of business will undoubtedly meet with many favorable responses. Mr. Smith estimates that 25% of the inbound competitive traffic would thus be diverted to the Tennessee Central and its connections and that the solicitation of the local men at Nashville, backed by the known interest of the city of Nashville as a stockholder in the Tennessee Central, would divert 15% of the outbound competitive traffic. These figures appear upon their face to be entirely conservative. They represent the deliberate judgment of the two men, who, best of all others, are qualified to speak upon the subject; and their testimony is wholly uncontroverted. Mr. Smith's statement as to how this would work is pertinent here (Record, Vol. 1, page 48):

"Should reciprocal switching be practiced at Nashville, whereby the Tennessee Central R. R. will have access to all industrial side tracks on the Louisville & Nashville R. R., or those jointly controlled with the Nashville, Chattanooga & St. Louis Railway, extraordinary efforts would be put forth by the soliciting representatives and other officers of the Tennessee Central R. R., to secure as much competitive traffic as possible for and from their competitors' terminals. Inasmuch as the primary revenue interests of the Southern Railway, Queen & Crescent, and Illinois Central will be to secure as much traffic as they can for their longer and more remunerative routes, the efforts of the Tennessee Central would be

ably assisted by the numerous soliciting representa-These combined efforts will tives of said lines. necessarily meet with a considerable degree of suc-As a rule, the 'home line' always possesses a measure of strength in the good will of the shippers. The lines of the Illinois Central, Southern Railway and Queen & Crescent cover such a vast amount of territory, that there is a large volume of traffic which is originated by them or which they deliver at stations, local and competitive, reached by their lines. Shippers and receivers on these lines can be much more readily reached by the agents and representatives of said lines, for the purpose of soliciting their traffic or influencing them, than by the representatives of the Louisville & Nashville R. R. or the Nashville, Chattanooga & St. Louis Railway, Shippers and receivers located on the tracks of the latter lines at Nashville, mostly entertain friendly sentiments towards their home lines, nevertheless they are all susceptible to solicitation, and while the representatives of the Louisville & Nashville R. R., as to its shippers hope to continue to receive the major share of their traffic, even under a reciprocal arrangement, we are bound, under the most favorable conditions, to lose a proportion of it."

Another significant feature that bears upon the part that will be played by the Southern Railway system and the Illinois Central, if the Tennessee Central is given access to appellants' terminals, is the fact that the Southern Railway and Illinois Central own the Tennessee Central's terminals at Nashville, title to which is in the name of a corporation called the Nashville Terminal Company. Of this Mr. Smith says:

"It is a matter of common knowledge that the Nashville Terminal Company, which supplies virtually all the terminal facilities of the Tennessee Central R. R. in the city of Nashville is owned, not by that line, but by the Illinois Central and Southern Railway, jointly or severally, which fact we may assume lends strongly to the interest those lines each may have in routing traffic via the Tennessee Central Railroad."

In this connection we call attention to the error of counsel for appellees in discussing the amount of this loss, when he says, near the conclusion of the discussion of this question, "But the real test of the loss which the appellants would suffer is not the gross revenue from the business which would be diverted, but the net revenue, and this it is estimated would be about \$100,000 per year. (Rec., Vol. 1, p. 45.)"

Counsel here, through evident inadvertence, says that the statement at the page mentioned referred to the aggregate net loss sustained by the two companies. Reference, however, to the citation given will show that it was Mr. A. R. Smith's testimony as to the net loss of the L. & N. alone, amounting to \$106,380. Mr. Barham, at page 55 of Vol. 2, states that the net loss of the N., C. & St. L. would be not less than \$84,150. The sum of these two, representing the total net loss of the two companies, is \$190,530 per annum, which by a typographical error, appears in our original brief as \$192,530. This is about \$16,000 per month.

But if this amount of damage would be suffered by enforcing the order, counsel claims that not to enforce it would cause an equal loss to the Tennessee Central, which has, therefore, lost \$2,000,000 in the past fifteen years and should not lose any more. But this is not a suit by

the Tennessee Central. To its credit be it said that at no time during this long period has it shown a disposition to attempt the manifest wrong of demanding equal enjoyment of the fruits of another railroad's foresight and investment. Counsel attempts to meet this suggestion by the claim that the city of Nashville represents the interests of the Tennessee Central because it is a large stockholder in that company. This desire to build up the Tennessee Central at the expense of the other two roads may be, and doubtless is, the real motive behind this whole proceeding by the city of Nashville, since, besides the Tennessee Central, only those shippers located exclusively on the tracks of the L. & N. or N., C. & St. L. are interested and they very slightly; but the Tennessee Central is a corporate entity with competent officials who are able to look after its interests and with open courts and commissions on all sides to which it can apply for the redress of any grievances it may have.

Here, however, it is not only not a complainant, but was a defendant with the allegation that it, too, was engaged in this nefarious practice of refusing to switch competitive traffic for its competitors—a practice, however, which we are naively told will be discontinued if the other two roads are required to switch for it. The proof shows, however, that the business of the industries on its tracks, which would be open to the other two lines under enforced reciprocal switching, would not be comparable to the business it would get access to upon the terminal tracks of the other two roads. This partial benefit, however, was fully taken into consideration in

the calculation showing the net loss of the appellants hereinabove stated.

IV.

The Power of the Court to Suspend an Order of the Interstate Commerce Commission is Restricted Within Narrow Limits by the Federal Statutes.

We do not agree with the above statement, except to a limited extent. It is true that the *tribunal* empowered to suspend orders of the Interstate Commerce Commission, composed as it is of three judges, is more important than that which tries ordinary cases; but the principles of law which shall govern it in the exercise of its general equity powers are not prescribed.

Here, however, the same court of three judges, which decided to sustain the Commission's order, also distinctly found that irreparable injury would follow its enforcement.

Counsel stress their claim that this is not a contest between the carriers and shippers but is a proceeding in which the decision of the Interstate Commerce Commission, a quasi-judicial tribunal, is under attack. We can not concede, however, that any particular sanctity on that account attaches to the case. Under the authority cited in our original brief, whose pertinency and binding force are not here questioned, the lower court, sitting as a court of equity, had the power, in its discretion, to enjoin the enforcement of this order of the Commission pending an appeal, notwithstanding it was of opinion that the

order should be sustained. It accordingly suspended the operation of the order, but because of appellees' own insistence that the question of ultimate suspension should be left to the Supreme Court, the lower court limited its order of suspension to a time within which the Supreme Court could pass upon the application for a suspension, pending the appeal, provided the appeal was taken and such application made within thirty days. There is certainly no question about the power of this court to further suspend the order, as was done in *Omaha Street Railway* v. *Interstate Commerce Commission*, 222 U. S. 582.

But counsel insist that in all the cases cited by appellants, where the lower court or this court granted a stay pending an appeal, there had been a restraining order or interlocutory injunction in effect in the lower court at some time. It will be recalled, however, that in several of these cases the restraining order or interlocutory injunction had been dissolved and was not in force at the time the order of suspension was granted. Assuming it to be true, however, that in each of these cases a restraining order or injunction had at some time been in force, we fail to see how that accidental circumstance can affect the general inherent power of a court of equity to grant this relief when the circumstances demand it. In other words, the mere granting or denial of a restraining order at an early stage of a case can not affect the right of the court, at its conclusion, to do what it deems proper with a motion to maintain the status quo. Counsel's suggestion may grow out of the consideration of

Equity Rule No. 74, which authorizes the trial judge in case of an appeal to suspend, modify, or restore an injunction during the pendency of an appeal, but this in nowise militates against the inherent power of a chancellor in advance, but in contemplation, of an appeal, to put in the decree itself such terms regarding the maintenance of the existing status pending an appeal as the interests of justice seem to require.

If, however, the existence of an injunction at some time were essential to the granting of this relief (which we deny), the facts in this case, as stated in our original brief and admitted in appellees' brief, show that there was in force from the day the application for an interlocutory injunction was heard, April 20, 1915, until after the final decision of this case, what amounted, in effect, to a temporary restraining order—the Commission's own action in postponing the effective date of the order even though this was done at the request rather than the order of the court. And if an injunction, actually issued by the lower court, were essential to action by this court, we have that injunction in the lower court's final order, which, by suspending the enforcement of the Commission's order pending the taking of this appeal, in effect enjoined its enforcement. All of counsel's suggestions, then, as to to the conditions precedent to this court's action in this matter are met in this case.

Counsel discusses Rule 74 and suggests that it makes no provision for a case where there has never been an injunction. That possible interpretation of the rule was just what deterred us from relying on an application to the lower court after the granting of an appeal and induced us to make the application at a time when there was no question as to the power of the court to grant it. Further discussion of this question, however, seems unnecessary since counsel shows no authority in opposition to the cases cited in our original brief, which approved this practice, and, of course, none which controverts our contention that this court has plenary power in the matter.

Counsel discusses the issue of the granting of writs of supersedeas by this court, but the very authority cited, In re McKenzie, 180 U. S. 549, declares that "there are instances where it has been done under special circumstances and in furtherance of justice." We claim that the circumstances here are special, because of the enormous loss which appellants will sustain, if the order is wrongfully enforced, and the negligible loss to appellees if it is wrongfully suspended; because of the importance and, in a sense, the novelty of the single question here involved; and because the trial court itself has positively declared that this relief should be granted.

Counsel draw fine distinctions in the case of Omaha Street Railway Co. v. Interstate Commerce Commission, 222 U. S. 582, where this court suspended the enforcement of an order of the Interstate Commerce Commission pending the appeal, even though the Commerce Court dissolved the injunction. It does not appear in the opinion in that case upon what ground the Commission's order was attacked; and the court did not intimate that it had granted the stay order because the jurisdiction of the

Commission was in question rather than because it was claimed that there was no substantial evidence to support the order. In either event, the enforcement of the order would have worked the same injustice and hardship.

Counsel closes his brief with this statement:

"The court of three judges is created for a special purpose and it has only such powers as are specifically conferred. The power of the court to grant a restraining order is limited to an order which does not extend beyond the time of its decision upon the application for an interlocutory injunction. Congress has guarded this with such great care that there is no room for doubt."

We can not agree to this statement. Chapter 32 of the Act of October 22, 1913, to which counsel refers does provide for the procedure in applications for interlocutory injunctions and temporary restraining orders, but beyond that it puts no limits upon the well-recognized general powers of a court of equity. In this case, as we have seen, the granting of the temporary restraining order was unnecessary, because of the Interstate Commerce Commission's own consent to bring about the same result until the case was decided. The application for an interlocutory injunction was denied, but the appellees themselves asked a final disposition of the case upon their answer and motion to dismiss for want of equity. The lower court accordingly did not confine itself to merely passing upon the application for an interlocutory injunction, but, in effect, tried the case upon its merits

and dismissed the bill. In doing this, it had all the powers of any court of equity, among which was the right to impose, as a condition to the decree, an order maintaining the status pending an appeal. The complaint, therefore, that this order of suspension was without authority seems to us wholly unfounded, but if this were not so, we have gotten beyond that stage in the proceedings, as the present inquiry relates solely to the powers of this court even if its exercise does involve the suspension of an order of the Interstate Commerce Commission. As this court declared in the Omaha Street Railway case, supra, that it had this power, we fail to appreciate the force of counsel's concluding statement above quoted as to the powers of the lower court in the premises.

We earnestly insist that no substantial reason has been shown why the lower court's partial suspension of this order pending appeal should not be continued in force until the appeal is decided.

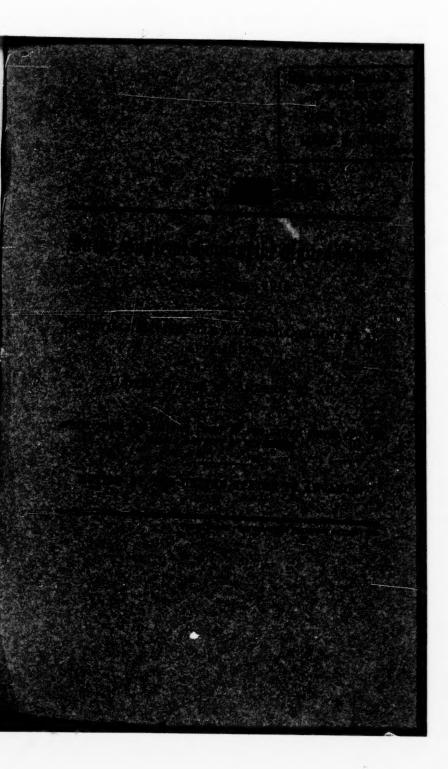
Respectfully submitted,

EDWARD S. JOUETT,

Solicitor for Appellants.

H. L. STONE, W. A. COLSTON, CLAUDE WALLER,

For Appellants.



In the Supreme Court of the Anited States.

OCTOBER TERM, 1915.

Louisville & Nashville Railroad Company et al., appellants,

v.

United States of America et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of section 2 of the act of June 16, 1910, 36 Stat. 542, and the Urgent Deficiency Act of October 22, 1913, 38 Stat. 208, 220, respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court during the present term.

This is an appeal from a final decree of the District Court of the United States for the Middle District of Tennessee, denying a motion for an injunction against the enforcement of an order of the Interstate Commerce Commission, and dismissing the petition of appellants therefor.

The case involves the question, inter alia, whether the rates and practices of the Louisville & Nashville

Railroad Company and the Nashville, Chattanooga & St. Louis Railway, established by agreement between the said companies, affecting the switching of competitive carload traffic at Nashville, subjected to undue and unreasonable prejudice and undue discrimination competitive carload traffic received from and delivered to the Tennessee Central Railroad Company, at Nashville, in violation of section 3 of the Act to Regulate Commerce.

The question is one of importance not only to the railroads and the shipping public generally, but also to the Interstate Commerce Commission in the administration of the Act to Regulate Commerce, and for that reason an early determination thereof by this court is desirable.

Opposing counsel concur.

JOHN W. DAVIS, Solicitor General.

MARCH, 1916.

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Office Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 290

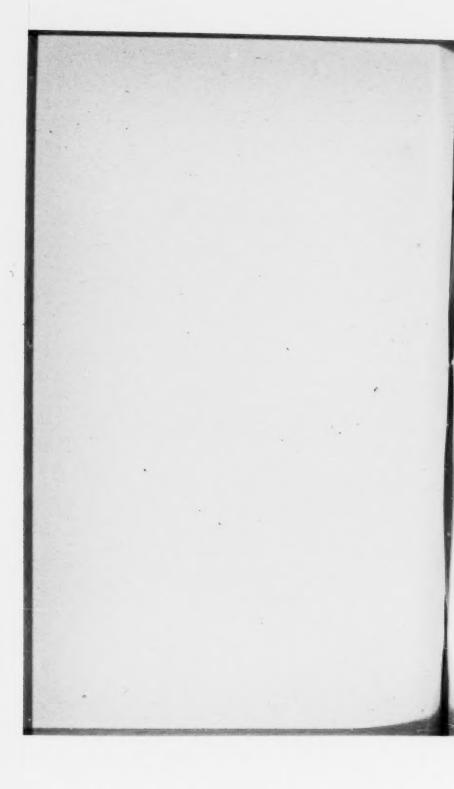
LOUISVILLE & NASHVILLE RAILROAD COMPANY, $A_{\mathsf{PPELLANTS}},$

vs.

UNITED STATES OF AMERICA, APPELLEES.

MOTION TO REASSIGN.

EDWARD S. JOUETT, Of Counsel for Appellants.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 711.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, APPELLEES.

MOTION TO REASSIGN.

The appellants respectfully move the court to reassign this appeal for hearing upon a day satisfactory to the court during the next term. The order advancing this case and setting it for argument on April 3, 1916, was entered on March 13, 1916. Notice of said assignment was received the next day by the attorney for appellants who has had charge of this appeal and was expected to brief it, but just two days later he was compelled to leave his office at Louisville to enter upon a long trial in the Federal court at St. Louis in an important case, of which he has had charge and which had been assigned for trial some months before. Owing to the fact that the record in this case contains about seven hundred printed pages, so that it was physically impossible

during the night adjournments of the St. Louis case to prepare the brief for appellants in time for counsel for the Government to prepare his reply, appellants' attorney laid the facts before the Solicitor General and requested that he endeavor to have the case reassigned. The Solicitor General replied that the Government would prefer not to make the application, but that it would not oppose it if made by appellants on April 3. Owing solely to the foregoing unavoidable circumstances, which prevented appellants from preparing their brief in time to enable the Government to prepare its reply, appellants make this application, a copy of which has been furnished to the Solicitor General.

EDWARD S. JOUETT, Of Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER THEM, 1945

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LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL., APPELLANTS.

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UNITED STATES OF AMERICA ET AL., APPELLES.

NASHVILLE SWITCHERG GARE

BRIEF FOR APPELLANTS.

EDWARD S. JOURTE,

Solicitor for Louisville or Nashville Railroad Cu.

W. A COLSTON, JNO. B. KREHLE, Of Command

Louisville, Ky., September, 1916.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

LOUISVILLE & NASHVILLE RAHLROAD COM-PANY, ET AL., - - - - - Appellants, versus

UNITED STATES OF AMERICA, ET AL., - - Appellees.

BRIEF FOR APPELLANTS.

I.

STATEMENT.

This case relates to the switching practices of the three railroads that serve the city of Nashville, Tenn.—the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Tennessee Central Railroad Company. Only a single question is involved and that is one of law. It is whether a certain joint terminal arrangement between the first two of these railroads constitutes an unlawful discrimination against the third, when the latter has had no part in the construction, maintenance or operation of these joint terminals, and hence is not admitted to their use. In other words, is this joint ownership and operation of terminals by the

Except where otherwise specified, all italies are ours

two roads a "switching for each other" which requires them to switch for the third if they would be free from the penalty of an unjust discrimination?

They voluntarily switch non-competitive cars between industries on their tracks and the point of interchange with the Tennessee Central; but they refuse to switch competitive cars—those whose road-haul service they themselves can perform at the same rate—because to do so is to turn over to their competitor for a nominal switching charge the valuable road-haul revenue accruing from the shipments moving to or from industries upon their cwn terminals.

Complaint was filed with the Interstate Commerce Commission by the city of Nashville and its Traffic Bureau to compel the first two roads to switch competitive cars between industries on their lines and the point of interchange with the Tennessee Central. The Commission held that the arrangement between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis was in fact merely a "switching for each other" and hence their refusal to switch for the Tennessee Central was a discrimination which it ordered the two roads to cease, that is, by dissolving their joint terminals or by admitting the Tennessee Central to the equal commercial use of them. (28 I. C. C. 533.)

By "commercial" use is meant the beneficial enjoyment, through having the two roads handle or switch the T. C.'s cars, in contradistinction to an "actual" use which would result if the T. C. had access to their terminals with its yard engines.

This suit was brought by appellants in the District Court for the Middle District of Tennessee to enjoin the enforcement of the Commission's order; and from the decision of the lower court sustaining that order (227 Fed. 258) this appeal is taken.

The record is quite large, because, in order to avoid the presumptions incident to an incomplete record, it was necessary to file as an exhibit with the bill the entire transcript of evidence heard by the Commission. Little of this, however, is important here because out of the numerous questions involved only this one of discrimination was made the basis of the Commission's decision.

Examination of this transcript will be practically unnecessary, as the historical and physical facts upon which the case must be decided either appear in the opinions of the Commission and the court or will be stated in this brief, and not denied by opposing counsel.

There is involved, therefore, the single question as to the effect of these undisputed facts. As an aid to the court's convenient consideration of it, we shall endeavor, at the risk of appearing prolix, to take from the record and present in this argument all the facts essential to a complete understanding and correct decision of the controversy—with the invitation, of course, to counsel for appellee to supplement or criticise if we fall short of doing this.

II.

SPECIFICATION OF ERRORS.

Only one error, in effect, is relied upon, and that is the finding of the court that the joint arrangement constitutes a switching of competitive cars by each of plaintiffs for the other, and hence that their refusal to switch competitive cars for the Tennessee Central constitutes an unjust discrimination. This error is set out more formally in the following assignment of errors (Vol. 1, p. 84):

"1. The court erred in denying the application of plaintiffs for an interlocutory injunction herein and in dismissing their bill.

"2. Switching by one railroad company for another, as meant in cases of this sort, is the movement, by the company upon whose tracks an industry is located, of a car between that industry and the point of interchange with another railroad, as the beginning of an outbound, or the ending of an inbound, transportation haul over the other railroad.

"Here the uncontroverted facts and circumstances existing at Nashville in connection with the acquisition, maintenance, and operation of joint terminals by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway show indisputably, as a matter of law, that plaintiffs do not switch traffic for each other, either competitive or non-competitive, but that each in effect does its own switching, under a valid, joint owning and operating arrangement whereby they acquired jointly

their central and principal terminals at a cost of several million dollars, and to these each contributed its privately owned tracks within the switching limits, and all these terminals are operated jointly, the expense being shared substantially in proportion to the number of cars handled for each, so that each thus pays for the movement of its own cars, neither pays the other any switching charge, and none is paid by the shipper.

"The court, therefore, erred in holding that the arrangement between the plaintiffs for the joint ownership, maintenance and operation of the terminals at Nashville is in substance or effect equivalent to one of said companies switching for the other, or is essentially the same as a reciprocal arrangement, constituting a facility for the interchange of traffic between the lines of the two railroads within the meaning of the second paragraph of Section 3 of the Interstate Commerce Act; in holding that they must afford such facility to the Tennessee Central Railroad Company; and in holding that their refusal so to do and to switch competitive traffic to and from the Tennessee Central on the same terms as non-competitive traffic, when both kinds of traffic to and from their respective roads are handled alike under their joint arrangement, is unjustly discriminatory.

"3. Based upon the above conclusions, the Interstate Commerce Commission entered an order commanding plaintiffs to desist from maintaining a practice whereby they refuse to interchange interstate competitive traffic to and from the tracks of the Tennessee Central at Nashville on the same terms as interstate non-competitive traffic, while interchanging both kinds of said traffic with each other on the same terms, and commanding plaintiffs to establish, publish, maintain and to apply to the switching of interstate traffic to and from the Tennessee Central tracks rates and charges which shall not be different from those which they contemporaneously maintain with respect to similar shipments from their respective tracks in said city.

"The court erred in holding that this order was supported by substantial evidence and that, upon the uncontroverted evidence, it involves no error of law; and in not holding that the report and order of the Commission were contrary to the indisputable nature of the evidence."

III.

BRIEF OF ARGUMENT.

It is not claimed by either the Commission or the court that the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, or either of them, could legally be required to switch competitive cars for the Tennessee Central as an original proposition. In fact, the Commission has in the very recent case of Louisville Board of Trade v. L. & N. R. R. Co., 40 I. C. C. 679, definitely rejected such a doctrine. The only ground upon which competitive switching for the Tennessee Central is here ordered is the finding that what the other two roads do is in effect to switch for each other and hence discriminate against the Tennessee Central in refusing to switch for it. We insist, on the contrary, that the undisputed facts, so far

from sustaining such a theory, distinctly show that the two roads named do not switch for each other and do not pay each other a switching charge, but that by reason of their joint operation of lawfully owned joint terminals each has access to all industries situated on those terminal tracks, and each actually handles its own car all the way to or from the industry and itself pays for such handling, just as it pays for all other terminal expenses incident to the handling of its own trains-passenger and freightthe switching to and from industrial plants being only a comparatively small part of all of the terminal services rendered at Nashville by the joint agency. But if, because of the joint agency, the transaction were not just the same as each switching its own car, it would still be so different from the service that is here ordered to be done for the T. C. as to afford no justification for the claim that the refusal to render said service is a discrimination.

1. Statement of Facts.

Instead of giving our own summary of the facts, we quote and adopt the statement given in the opinion of the lower court, which is practically the same as that to be found in the Commission's opinion. It is as follows (Vol. 1, p. 61):

"The material facts established by the undisputed evidence before the Commission and set forth, in the main, in its detailed findings, may be thus summarized:

"Nashville is traversed and served by three railroads: The Louisville & Nashville, extending through from the north to the south; the Nashville & Chattanooga, from the west to the southeast; and the Tennessee Central, from the northwest to the east. The Louisville & Nashville and the Nashville & Chattanooga entered this city many years ago; the Tennessee Central in recent years. The Louisville & Nashville and the Nashville & Chattanooga are natural competitors for Nashville traffic; and each competes for such traffic with the Tennessee Central. All three railroads have extensive terminals in the city, with depots, yards, and tracks; their respective tracks reaching industries located mainly in different sections of the city, but partly in the same sections. The tracks of the Tennessee Central are connected with those of the Nashville & Chattanooga by an interchange track at Shops Junction, in the western section of the city, and with those of the Louisville & Nashville by an interchange track at Vine Hill. just outside the city on the south. The tracks of the Louisville & Nashville and the Nashville & Chattanooga are connected at several points, but principally in the joint terminals operated by them in the center of the city, as hereinafter set forth. tire situation is fully shown by a map accompanying the report of the Commission. (38 I. C. C. Sup. Opp., p. 78.)

"Originally the northern and southern lines of the Louisville & Nashville had separate terminals in different sections of the city, and the Nashville & Chattanooga, a terminal midway between them; there being no track connections in the city between any of these different terminals. In 1872, by agreement

between the companies, the Louisville & Nashville acquired, for the annual rental of \$18,000 and other valuable considerations, perpetual trackage rights connecting its two terminals with each other and with the terminal of the Nashville & Chattanooga; this agreement also contemplating the construction of a union passenger station on the depot grounds of the Nashville & Chattanooga.

"In 1880 the Louisville & Nashville began to acquire the capital stock of the Nashville & Chattanooga, and now owns slightly more than 71 per cent thereof.

"In 1893, to facilitate the construction of the proposed union station and other terminal facilities, the Louisville & Nashville and the Nashville & Chattanooga caused their co-petitioner, the Terminal Company, to be organized under the general incorporation laws of Tennessee. These laws give terminal companies the right to lease their property and terminal facilities to any railroad company utilizing them, upon such terms and time as may be agreed upon by the parties. The Louisville & Nashville owns all of the capital stock of the Terminal Company.

"On April 27, 1896, the Louisville & Nashville and the Nashville & Chattanooga, by separate indentures, leased to the Terminal Company for 999 years all of the property and railroad appurtenances thereon which they severally owned or controlled within or in the immediate vicinity of the original depot grounds of the Nashville & Chattanooga. In each of these leases the amount of the stipulated rental was left blank; the Terminal Company, however, cov-

enanting to keep the premises in repair and to pay all accruing taxes.

"On June 15, 1896, the Terminal Company leased to the Louisville & Nashville and the Nashville & Chattanooga, jointly, for 999 years, all the premises acquired by it under the former leases from them, together with all other premises which it had subsequently acquired or might thereafter acquire. Under this lease the Terminal Company covenanted to construct upon the leased premises all passenger and freight buildings, tracks and other terminal facilities suitable and necessary for such railroads entering at Nashville as might contract with it therefor, and to pay all taxes and insurance upon the leased premises and the improvements to be constructed thereon: while the two railroad companies agreed to pay it annually as rental for the leased premises and the improvements thereon, 4% upon the actual cost of the acquisition of the premises and the construction of the improvements, in addition to the amount of the taxes and insurance; and further agreed to keep the leased properties in repair.

"On June 21, 1898, the Terminal Company entered into a contract with the City of Nashville whereby it agreed to construct a union passenger station on the premises covered by the above-mentioned leases, with freight depots, tracks, switches, etc., and viaducts over its tracks and certain new streets and extensions of streets; the city agreeing to secure the condemnation of land, close certain streets, and erect approaches to certain of the viaducts. The Louisville & Nashville and the Nashville & Chattanooga, in consideration of the benefits to be received by them from the proposed improvements, guaranteed the perform-

ance of the obligations of the Terminal Company under the contract. This contract made no provisions for future railroads.

"The improvements agreed upon, including the passenger station, depot, tracks, etc., were duly made, being completed in 1900. The tracks thus constructed by the Terminal Company are connected with those of the Louisville & Nashville and the Nashville & Chattanooga, but not with those of the Tennessee Central.

"The contribution of the city to these improvements cost approximately \$100,000; while the total cost of the Terminal Company was considerably in excess of two million dollars. To enable the Terminal Company to acquire the additional properties which it had purchased in addition to those leased to it by the two railroads, and to construct these improvements, the Louisville & Nashville and the Nashville & Chattanooga from time to time advanced to it the necessary funds. To repay these advances the Terminal Company executed a mortgage securing an authorized issue of three million dollars of bonds. These bonds were guaranteed by the two railroads. under authority given by the Tennessee laws relating to terminal companies. Of these authorized bonds. \$2,535,000 were actually issued, the proceeds of which were used to repay the advances made by the railroads.

"During the construction of these terminal facilities the Louisville & Nashville and the Nashville & Chattanooga continued, as theretofore, to operate their respective terminals independently, under reciprocal switching arrangements, by which each switched cars for the other to and from their

local destinations, at a uniform charge of \$2.00 per car; this switching charge being absorbed on competitive traffic by the railroad having the transportation haul, while on non-competitive traffic it was paid by the shipper or consignee.

"On August 15, 1900, shortly after the completion of the terminal facilities by the Terminal Company, the Louisville & Nashville and the Nashville & Chattanooga, being then the only two railroads entering Nashville, as a matter, primarily at least, of economy in the operation of terminal facilities, entered into an agreement under which they have since maintained and operated joint terminal facilities at Nashville, the effect of which is the underlying matter of controversy in this case. The essential provisions of this agreement are as follows:

"The two railroads created an unincorporated organization, styled in the agreement the 'Nashville Terminals,' and hereinafter called the Terminals, for the maintenance and operation of terminals at Nashville, embracing in such organization all the properties, buildings, tracks, and terminal facilities leased to them by the Terminal Company, together with certain other individually owned tracks which they severally contributed and attached to said terminals, consisting of 8.10 miles of main and 23.80 miles of side track contributed by the Louisville & Nashville, and 12.15 miles of main and 26.37 miles of side tracks contributed by the Nashville & Chattanooga. The agreement further provided: (a) That the entire properties thus included within the Terminals should be maintained and operated, as such, under the management of a Board of Control, consisting of a Superintendent of the Terminals and

the General Managers of the two railroads, the operation of the Terminals to be under the immediate control of the Superintendent, who should appoint, subject to the approval of the Board, a Station Master, Master of Trains, and other designated officers, each of whom should have a staff of employes for the conduct of his department; (b) that the expenses of maintaining and operating the Terminals should be apportioned between the two railroads as follows: passenger service expenses (including all expenses of the union passenger station) in proportion to the number of passenger train cars and locomotives handled by the Terminals for each; siding expenses (to be ascertained on the basis of the number of hours that yard engines were engaged in switching to and from house and private sidings, and bulk or team tracks, as compared with the total number of hours that they were engaged in all classes of service) in proportion to 'the total number of cars placed on and withdrawn from house and private sidings, bulk or team tracks (by the Terminals) for each' railroad; train yard expenses, in proportion to the number of all cars and train locomotives received and forwarded by the Terminals for each; and general expenses, in proportion to the average percentages of the three other expense accounts; provided, that before such apportionment of expenses, there should be deducted from the aggregate expenses all moneys received by the Terminals for room rents, restaurant and news-stands privileges, etc., and services rendered any other person; (c) that the separate freight stations and appurtenant tracks of each railroad and the tracks allotted to each for receiving and delivering bulk freights,

should be maintained and operated by the Terminals for each of them direct, and the expenses thereof charged directly to each; a like provision being made in reference to the operation of the terminal roundhouse for the Louisville & Nashville alone; (d) that each railroad should set apart and allot to the use of the Terminals, switching engines adequate to the work of switching and pulling trains in and about the Terminals, corresponding in efficiency to the proportion of work performed for each; which should be maintained and kept in repair by the Terminals and for which it should pay the railroads four per cent annually upon their valuation at the time of allotment; and (e) that the rights, privileges and uses of all the property in the Terminals by the respective railroads, should be 'the same, equal and joint, and none other,' except only as to the bulk tracks, etc., operated for each separately.

"In operating under this agreement all the work of breaking up incoming freight trains of both railroads after they come into the central yards of the Terminals, and of collecting and making up outgoing freight trains for both railroads before they leave such yards, is performed by the Terminals. Thus, when an incoming freight train comes in on the line of either railroad into the central vards, all cars destined for industries located within the Terminals, either on the tracks jointly leased to the Terminal Company or on the tracks of either railroad otherwise included within the Terminals, are switched by the Terminals to such local destination, without distinction as to the particular tracks on which such industries are located; and, conversely, freight cars loaded at industries located on any of such tracks for

transportation out of Nashville on the line of either railroad, are switched by the Terminals to the central yards and made up into the outgoing train. In other words, the entire switching service in reference to either the incoming or the outgoing freight trains of each railroad to and from the separate and joint tracks of both railroads, is performed by the Terminals, acting as joint agent of the two railroads under the Terminal agreement. However, in accordance with this agreement, the only direct charge for such switching service is, in effect, made against the railroad having the transportation haul, in accordance with the provision that the siding expenses shall be apportioned between the two railroads in proportion to 'the total number of cars placed on and withdrawn from house and private sidings, bulk and train tracks, for each of the parties.' Obviously, however, this apportionment of siding expenses does not represent the entire actual cost incident to the switching services, as it does not include any part of the general expenses and fixed charges of the Terminal, which are apportioned between the two railroads upon a different basis, as provided by the agreement.

"The interchange track between the Nashville & Chattanooga and the Tennessee Central at Shops Junction is within the switching limits of the Terminals under this agreement, but the interchange track between the Lousville & Nashville and the Tennessee Central at Vine Hill is outside of these switching limits.

"On December 3, 1902, the Terminal Company, the Louisville & Nashville, and the Nashville & Chattanooga entered into an agreement, reciting that the two leases of April 27, 1896, from the railroads to the Terminal Company had been cancelled and abrogated; modifying the lease of June 25, 1896, from the Terminal Company to the railroads, so that thereafter it should only include certain tracks and parcels of land that had been directly acquired by the Terminal Company, and should be otherwise rescinded and abrogated and the properties of the railroads otherwise respectfully restored as they were prior to the lease, subject only to the mortgage that had been executed thereon by the Terminal Company to secure its issue of bonds; reducing the term of the lease to 99 years; and modifying in certain respects the provisions of the lease as to the rental to be paid.

"The Terminal tariffs of both railroads publish service by the Terminals and provide that 'there is no switching charge to or from locations on tracks of the Nashville Terminals, within the switching limits, on freight traffic, carloads, from or destined to Nashville' over either railroad, 'regardless of whether such traffic is from or destined to competi-

tive or non-competitive points.'

"The Tennessee Central entered Nashville in 1901-2, after strong opposition from the Louisville & Nashville, and leased its terminal facilities, consisting of a passenger station, freight depots, tracks, etc., from another Tennessee railroad terminal corporation that had been organized in 1893.

"Prior to 1907 neither the Louisville & Nashville or the Nashville & Chattanooga would interchange traffic with the Tennessee Central at Nashville or any other point of connection. In that year, however, they both began to interchange with the Ten-

nessee Central at Nashville all non-competitive traffic, exclusive of coal traffic, at the rate of \$3.00 per car; non-competitive Nashville traffic being defined as traffic between Nashville and points reached only by one railroad into Nashville or points served by two or more railroads into Nashville for which, however, one railroad can maintain rates which the others can not meet. This interchange of non-competitive traffic between both the Louisville & Nashville and the Nashville & Chattanooga was and is effected by the connection between the Tennessee Central and the Nashville & Chattanooga at Shops Junction, there being no direct connection between the Tennessee Central and the Louisville & Nashville.

"On December 9, 1913, upon complaint by the City of Nashville, and others, the Commission found that the Louisville & Nashville and the Nashville & Chattanooga switched all traffic for each other at Nashville but refused to switch coal to and from the Tennessee Central except at a prohibitive rate, thereby unjustly discriminating against coal to and from the Tennessee Central in favor of coal to and from each other's lines, and entered an order requiring the Louisville & Nashville and the Nashville & Chattanooga to abstain from maintaining any different practice with respect to switching interstate carload shipments of coal from and to the Tennessee Central at Nashville from that maintained with respect to similar shipments from and to their respective tracks. The Louisville & Nashville and the Nashville & Chattanooga thereupon filed a petition in this court seeking to restrain the execution of this order and applied for an interlocutory injunction, which

was denied by this court. Louisville Railroad v. United States (D. C.), 216 Fed. 672 (three judges). This decision was recently affirmed, on appeal, by the Supreme Court. Louisville Railroad v. United States, 238 U. S. 1. This order, however, was interpreted by both railroads, as relating exclusively to non-competitive coal, and while they have since that time switched non-competitive coal to and from the Tennessee Central at \$3.00 per car, the same as other non-competitive traffic, they have not changed their former practice relative to competitive coal.

"A table introduced in evidence by the petitioners (33 I. C. C., at p. 83), shows the average cost to the Terminals of handling city freight traffic to be, exclusive of fixed charges, \$4.128 per car. The Commission was of opinion, that, while these figures might not be absolutely correct, they were not shown to be substantially incorrect, and that the charge of \$3.00 per car for switching Tennessee Central noncompetitive traffic was not shown to be unreasonably high; a conclusion in which we entirely concur.

"The Louisville & Nashville will switch competitive coal and other competitive traffic at Nashville to and from the Tennessee Central but only at its local rates, such interchange being usually effected through the agency of the Terminals, at Shops Junction, over the rails of the Nashville & Chattanooga. For a while the Nashville & Chattanooga would in like manner perform the same switching service to and from the Tennessee Central at its local rates, its published Terminal tariff of December 14, 1913, expressly providing that such local rates would apply on competitive traffic from and destined to the Tennessee Central. Since January 25, 1914, how-

ever, shortly after the complaint in this case was filed, its Terminal tariff has provided that competitive traffic will not be switched to and from the Tennessee Central, and no local rate applicable thereto has been published. The Terminal tariff of the Tennessee Central provides that Louisville & Nashville and Nashville & Chattanooga competitive traffic will be switched at its local rates. The local rates applied to such switching by the Louisville & Nashville total from \$12 to \$36 per car; by the Nashville & Chattanooga from \$7 to \$36 per car; and by the Tennessee Central from \$5 to \$36 per car. These rates are virtually prohibitive. The Tennessee Central favors their reduction; but will not reduce its rates until the other railroads do likewise.

The cost to the Terminals of switching competitive Tennessee Central traffic is the same as the cost of switching non-competitive. The Louisville & Nashville interswitched competitive and non-competitive traffic on the same terms with other carriers at Memphis, Tenn., Birmingham, Ala., and several other points. The Nashville & Chattanooga interswitches both kinds of traffic with all other carriers at all connection points at the same rates, except with the Tennessee Central at Nashville; having had in effect at Lebanon, Tenn., where it also connects with the Tennessee Central, a switching charge of \$2 per car for both kinds of traffic since November 14, 1914.

"The physical conditions surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, on the one hand, and the Tennessee Central, on the other, in reference to the number and location of industries, the switching movements, involved, and the like, are set forth in detail in the report of the Commission (33 I. C. C., at p. 86). Without restating them here, it is sufficient to say that we entirely concur in the finding of the Commission that the physical conditions of interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga and the Tennessee Central are not shown to differ substantially from the conditions of interchange between the lines of the Louisville & Nashville and the Nashville & Chattanooga, and that, moreover, none of the conditions relating to the switching Tennessee Central traffic appear to differ materially from the conditions of interchange between the lines of the Louisville & Nashville and the Nashville & Chattanooga prior to the establishment of the Terminals."

To show the conclusions of the court and the reasoning upon which they are founded, we further quote that part of the opinion which immediately follows the above recital of facts. The court said:

Upon the foregoing facts, we have, after careful consideration, reached the following conclusions:

The operation jointly carried on by the Louisville & Nashville and the Nashville & Chattanooga under the Terminals agreement is not a mere exchange of trackage rights to and from industries on their respective lines at Nashville, under which each does all of its own switching at Nashville and neither switches for the other. It is, on the contrary, in substance and effect, an arrangement under which the entire switching service for each railroad over the joint and separately owned tracks is performed jointly by

both, operating as principals through the Terminals as their joint agent; each railroad, as one of such joint principals, hence performing through such agency switching service for both itself and the other railroad. And the fact that the charge for such joint switching service is made on an approximately proportionate basis of actual cost, exclusive of fixed charges, against the railroad having the transportation haul, does not, in our opinion, change the underlying and dominant fact, that the switching service itself is performed by both railroads jointly, that is by each railroad operating as a joint principal through the means of the joint agency; the apportionment of the expenses relating only to the payment for the service and not to the joint performance of the service itself. And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely concur in the conclusion of the Commission that such joint switching operation "is essentially the same as a reciprocal switching arrangement," constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of Section 3 of the Interstate Commerce Act. That each railroad does not separately switch for the other, but that such switching operations are carried on jointly, is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers, could be easily put beyond the reach of the Act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done,

rather than in the particular device employed or the names applied to those engaged in it. See, by analogy, United States v. Chicago Railroad, 237 U. S. 410, 413.

Being, in effect, a reciprocal switching operation carried on by the Louisville & Nashville and the Nashville & Chattanooga, constituting a facility for the interchange of traffic between these two railroads, it necessarily follows, under Section 3 of the Interstate Commerce Act, that equal facilities must be afforded all other lines for like interchange of traffic, without discrimination; and, that, under Section 15 of the Act, the Commission is authorized to require the railroads performing such reciprocal service to desist from any discriminatory service in respect to such switching operations. Pennsylvania Co. v. United States, 236 U. S. 351; Louisville Railroad v. United States (U. S.), sup. at p. 20; Louisville Railroad v. United States (D. C.), sup., at p. 683.

And in view of the fact that the physical conditions surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, on the one hand, and the Tennessee Central, on the other, are not substantially different from those surrounding the interchange of traffic between the lines of the Louisville & Nashville and the Nashville & Chattanooga, and that the cost to the Louisville & Nashville and the Nashville & Chattanooga of switching competitive Tennessee Central traffic is the same as that of switching its non-competitive traffic, we entirely concur in the conclusion of the Commission that the refusal of the Louisville & Nashville and the Nashville & Chattanooga to switch competitive traffic to and from the

Tennessee Central on the same terms as non-competitive traffic, while interchanging both kinds of traffic on the same terms with each other, is unjustly discriminatory. Such discrimination is not, in our opinion, obviated by the fact that the joint switching operation of the Louisville & Nashville and the Nashville & Chattanooga involves the use of the joint Terminals which they have constructed at great expense, or the fact that under the Terminals agreement they contribute to the expense of maintaining the Terminals and carrying on their switching operations in the manner hereinbefore set forth.

We therefore conclude that the application of the Louisville & Nashville and the Nashville & Chattanooga for a temporary injunction should be denied. And since there is exhibited with and as a part of the petition all the evidence taken before the Commission, we are constrained to conclude that the petition shows on its face no equity or ground for permanently enjoining the enforcement of the order of the Commission, which is the ultimate relief sought. We are hence of the opinion that the motion of the United States and of the Commission to dismiss the petition should, as to the petitioning railroads, be sustained.

2. Certain Incidental Questions.

Before discussing the ultimate conclusion that we insist should be drawn from the foregoing facts, it is deemed proper briefly to consider here certain incidental matters, a clear understanding of which is somewhat material to the decision of the main question.

(1) What is Switching?

Switching by one railroad for another, as that expression is used in this case and in all other switching cases which have been considered by the courts, means, as we have defined it in the second assignment of errors, the movement by the company upon whose tracks an industry is located of a car between that industry and the point of interchange with another railroad, as the beginning of an outbound, or the ending of an inbound, transportation haul over the other railroad.

In other words, it is the initial or final movement of a car upon the terminal tracks of one railroad in aid of the road-haul movement over another railroad. The railroad upon whose terminals is located the industry which is the origin or destination of the car, moves the car with its switch engine to or from the point of interchange with the other road, and thus is said to switch for it.

As compensation for this service it receives a small fee per car called a "switching charge," while the railroad which performs the road-haul service gets the roadhaul revenue.

(2) Switching Competitive Traffic.

This is what the Commission orders the appellants to do for the Tennessee Central (Vol. II, p. 589), and it is this that they are here resisting, whether or not they should switch this traffic being the sole question in the case.

a. Its Meaning.

Competitive traffic is carload freight moving to or from an industry situated upon the terminal tracks of a railroad company (which may be called the Owning Company) when the ultimate origin or destination of the car can be reached by the rails of that company (either alone or with its connections) and at a rate no greater than that of its competitor to whose line it is asked to switch the car.

The Owning Company naturally is unwilling to switch traffic (except where its competitor can reciprocate), because to do so means to give over to its competitor, in return for a nominal switching charge, the valuable roadhaul revenues to which it is entitled because of the industry being located upon its terminals.

b. Consequences to the Shipper.

Refusal to do such switching does no material harm to the shipper for the Owning Company (upon whose terminal tracks his industry is located) performs the road-haul service at the same rates as its competitor. The shipper may be subjected to slight inconvenience incident to drayage where the car comes in over some other line, but this results only because of a misrouting which occurs only once in thousands of cars, and when it does the other railroad pays this drayage.

As shown in the foregoing statement of facts the Tennessee Central also refuses to switch competitive traffic

for the plaintiffs, but, as explained by the court (Vol. I, p. 69), this is merely retaliatory. Naturally it desires reciprocal switching because thereby more industries would be opened to it that it would open to plaintiffs; accordingly it made no defense to this proceeding to obtain switching for competitive traffic, but it has not in its own name asked it.

To avoid the inconvenience incident to the occasional misrouting of a car, all three companies have ordinarily hauled the car at "nearest station" rates, which are too high to justify the other railroad absorbing. The Commission in speaking of this, thus supports our contention that the shipper is not pecuniarily affected (Vol. II, pp. 586-587):

"The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville causes Nashville shippers little direct pecuniary loss. Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located."

c. Consequences to the Companies Owning the Terminals.

The ground of the objection to switching competitive traffic for a competitor is that the carrier owning the terminals has acquired them at great cost solely as an aid and incident to the performance of this transportation service, and, if their use is thus turned over to a competitor, the owning company is not only deprived of the

road-haul revenue to obtain which it acquired these terminals, but it sees a competitor, by the use of its property, enriched to the exact extent of its own money loss, while the public, represented by the shipper, saves nothing, because the same freight charges apply over either line. Nor would the insignificant switching charge deter a competitor from actively soliciting the business of these industries, for it is glad enough to charge the shipper only the transportation rate, thus itself absorbing the slight switching charge, in order to get the large road-haul revenue. In this way the competitor, besides sharing the business of the company owning the terminals, would as a quasi-partner, enjoy its terminals upon more favorable terms than the owner itself, as it would get all the benefits of ownership without participating in the original cost or in the continuing expenditures for maintenance, taxes, interest, repairs and other fixed charges.

The money loss above referred to will be very great. The uncontradicted proof offered by the men best qualified to know—the heads of their respective traffic departments—shows that requiring the plaintiffs to switch competitive traffic for the Tennessee Central at Nashville will cause them a net loss in road-haul revenues (after deducting cost of service and the returns from competitive traffic they will get from the Tennessee Central) amounting to the enormous sum of \$190,630.00 per annum—\$106,480.00 to be lost to the L. & N. (Vol. I, pp. 39-49) and \$84,150.00 to be lost to the N., C. & St. L. (Vol. I, pp. 50-56).

d. The Law as to Requiring Competitive Switching.

The question as to whether or not the Commission has the power to require a railroad to switch competitive traffic, where there is no claim of discrimination, was much debated in the trial of this case before the Commission, but it did not expressly decide the question. It apparently considered, however, that it had no such power, because its order was based solely upon the ground of discrimination. This it can always compel the carrier to discontinue, as it does not involve a definite order to do any particular thing, but leaves it to the option of the carrier to cease doing the thing under consideration or else to do it for others. Since the decision in this case, however, the Commission has rendered its opinion in the Louisville Switching Case (Board of Trade v. Louisville & Nashville R. R. Co., 40 I. C. C. 679, decided July 5, 1916), in which it distinctly held that the Act to Regulate Commerce forbids the Commission to require competitive switching.

There, in construing this act it uses the following language, which could hardly be plainer:

"The proviso in Section 3 protects the carrier that has secured and built up valuable terminals, without which its railroad would be of little use, against having those terminals utilized by a competing carrier that has not provided itself with adequate terminals and that desires to thus secure the line haul which the carrier owning the terminals is prepared to perform and which the other carrier can

not secure unless it can have the use of the terminals of its competitor."

And again, in showing the injustice of giving one road's terminals to another that has none, the Commission said:

"We can not believe that the law was intended to mean that a competing rail line may now be built between important commercial centers served by a railroad long established and possessing adequate and valuable terminals at both points, and 'by making a physical connection' 'at an arbitrary point near its terminus' be accorded the right of access to those terminals for originating and delivering freight hauled by it and which the carrier owning the terminals is not only prepared but anxious to carry at rates and under rules and regulations that are subject to all of the requirements and restrictions of the Act."

In that case, while distinctly holding that it had no power to compel competitive switching, the Commission found, as in this case, that the L. & N. in switching for the C. & O. was discriminating against other roads entering Louisville, and accordingly ordered that discrimination to be discontinued. This was promptly done by ceasing to switch for the C. & O., so that the L. & N. now lawfully refuses to switch competitive traffic for any of the railroads serving Louisville.

(3) The Language of the Commission's Order.

The meaning of the rather peculiar language of the Commission's order is not quite clear without a word of explanation. It must be remembered that the plaintiffs since 1907 (Vol. I, p. 67) have regularly switched noncompetitive traffic to and from the Tennessee Central tracks at the nominal switching charge of \$3.00 per car. They did this because they were interested in having the shippers on their tracks extend their buying and selling markets to points on the lines of other railroads which plaintiffs' lines would not reach. What the Commission purposed by its order was to require plaintiffs to switch competitive cars for the Tennessee Central so long as they switched them for each other, that is, so long as they continued their existing joint terminal arrangement; but this could not be ordered positively, as this court has decided in Great Northern v. Minnesota, 238 U. S. 340. 346, that the carrier always has the right to exercise its option in determining which of two courses it will pursue to avoid the discrimination. To accomplish its purpose, then, the Commission used the roundabout expression contained both in the opinion and order-to cease refusing "to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville on the same terms as interstate non-competitive traffic, while interchanging both kinds of said traffic on the same terms with each other, as said practice is found by the Commission in its said report to be unjustly discriminatory" (Vol. II, p. 589). They are not ordered to

switch competitive traffic for the Tennessee Central because they already switch non-competitive, but they are ordered to switch both for the Tennessee Central because they treat both alike and switch both for each other.

The next step, which was still more remarkable, necessarily called for the second section of the order requiring plaintiffs to publish and thereafter to maintain and apply to the switching of interstate traffic (both competitive and non-competitive) to and from the tracks of the Tennessee Central Railroad Company at said Nashville, "rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city" (Vol. II, p. 590). And this is ordered notwithstanding the facts that each of the plaintiff companies handles all cars clear through to or from the industry on its tracks; that it pays to its associate no switching charge; and that it follows the universal custom of railroads to make no charge against the shipper for the terminal service incident to a delivery on its own tracks.

It may be noted, in passing, that aside from all other considerations, the logical result of the conditions described in the last two subsections is that the plaintiffs can in no event be required to switch for the Tennessee Central.

In the first (d) we have seen that the Commission can not require one railroad to switch competitive traffic for another. Upon what principle, then, can two companies, which own their terminals jointly and operate them as one, be required to switch competitive traffic for an outsider?

In the second subsection (3) it is shown that the Commission requires plaintiffs in switching for the Tennessee Central to charge "rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city." This is a practical impossibility, as the plaintiffs make no charge either against each other or against a shipper for switching movements to and from industries upon their tracks. The logical result, then, of this order is that plaintiffs must begin, against their will, assessing switching charges against the shippers upon their tracks in order, fersooth, that they may assess such a charge against the Tennessee Central; or else that they must switch for the Tennessee Central without charge. Either of these propositions seems unbelievable.

(4) The Terminal Company's Status.

The Louisville & Nashville Terminal Company, which is the name of the corporation that holds the legal title to the Union Station property and central yards (subject to the mortgage thereon) was made a party to this proceeding, but having leased its property for 99 years to the plaintiffs, it has no active participation in the business. It must not be confused with the "Nashville Terminals" which is the designation of the joint agency, by means of which the plaintiffs operate the terminals and, among

other things, keep proper account of the services chargeable to each.

(5) Reciprocal Switching at Memphis and Other Cities.

There is some mention in the opinion of "reciprocal switching," in which one or both of plaintiffs participate at certain other cities in the South: but this was merely treated as evidence of such a custom presumably not being unfair or burdensome. It is readily seen, however, that this depends upon the conditions at each place. It is usual in many cities for railroads to practice switching competitive cars for each other for a nominal switching charge, but ordinarily this occurs only when the industries upon their respective tracks are so evenly balanced that the loss and gain of revenue hauls practically equalize each other. The Commission, however, did not base its order upon discrimination caused by a different practice at other places, but upon the claim that the plaintiffs switch both competitive and non-competitive traffic for each other at Nashville, and upon the same terms, and yet refuse to do so for the Tennessee Central.

3. Argument.

The statement of the case quoted above from the opinion of the lower court, considered along with the foregoing discussion of certain other incidental facts, speaks so plainly that an extended argument in support of the plaintiffs' contentions concerning the various points involved is hardly necessary. Plaintiffs summarize these as follows:

- 1. Each plaintiff pays for, and through the joint agency performs, the service incident to switching its car between the point of interchange and the industry, in the case of every car which is hauled inbound or outbound over its tracks. Accordingly neither switches for the other nor discriminates against the Tennessee Central in refusing to switch for it.
- 2. If the arrangement at Nashville should be held to constitute any sort of switching service, rendered by one of the constituent companies to the other, it would not constitute an unjust or undue discrimination for the reason that the circumstances and conditions under which the service is rendered are totally dissimilar from those necessarily existing in connection with the handling of cars for the Tennessee Central.
- 3. Jointly owned, maintained and operated terminals are not "facilities," the equal use of which must, under Section 3 of the Act to Regulate Commerce, be given to other roads not interested therein. If they are not, then Section 3 of the Act to Regulate Commerce does not apply and the Commission is without jurisdiction to forbid the alleged discrimination.
- 4. The joint arrangement at Nashville is not a mere "device" to enable the two constituent companies to accomplish reciprocal switching without having to do the same for the third Nashville Railroad.
- This court can review and set aside the Commission's order when the ultimate conclusion from undisputed facts is wrong.

- 6. The decision of this court in a former litigation, involving a somewhat similar question, is not an authority here because the facts before the court in the two cases are wholly different.
- 7. This court has distinctly approved the right of two companies to unite their terminals for their exclusive use.
- Plaintiffs do not Switch for Each Other and hence do not Discriminate Against the Tennessee Central in Refusing to Switch for it.

The Commission finds that the exchange of facilities between the plaintiffs, together with their joint operating arrangement, constitutes what it conceives to be reciprocal switching. There is no difference between reciprocal switching and any other switching so far as the physical performance of the service is concerned. It always involves the above-described physical action upon the part of the company owning the terminals. Reciprocal switching is merely the custom that railroads have of doing this switching for each other, generally at a nominal charge. It is well understood that this charge does not afford compensation for the service actually rendered, as the real consideration is the expectation of getting a practically equivalent amount of like competitive business from industries upon the rails of the other road.

There are many outstanding differences between reciprocal switching and what is done between the plaintiffs at Nashville. In reciprocal switching there is always a fixed charge per car, which is paid by the transportation line to the company owning the terminals. At Nashville the transportation line pays no charge to the company that happens to hold the legal title to the tracks upon which the industry is located. Besides some of the industries are located upon the jointly owned central terminals.

In reciprocal switching the line owning the terminal tracks performs the service of moving the car between the industry and the point of interchange at its own cost, charging, as above stated, a fixed fee as against the transportation line. In Nashville, the situation is reversed. The transportation line itself pays the cost of switching the car from the point of interchange to the industry upon the other company's track. This is done by dividing the joint expenses according to the number of cars handled for each line, the company having the transportation haul being considered as the owner of the car in question from the beginning to the end of every haul, including the terminal service.

In order to consider this question analytically, let us see how a condition similar to the present one at Nashville can be evolved by gradual, but entirely legal, steps. Leaving out of consideration, for the argument's sake, the important feature of their actual joint ownership of the union station and principal terminal yards, suppose, for example, that while the L. & N. and N., C. & St. L. are owning and operating their terminals independently, the L. & N. purchases from the N., C. & St. L. trackage rights over the latter's terminals, agreeing

to pay a fixed, annual money rental, as was done in the case of the first acquisition by it of trackage rights through the terminals. Suppose later the N., C. & St. L. R'v purchases for a money consideration trackage rights over the L. & N.'s tracks at Nashville. Under these two contracts, each road would be running its own engines and trains, not only over its own tracks, but over the tracks, the use of which it had leased from the other. If the doctrine, which we attempt to establish elsewhere in this brief, that a railroad company can not be compelled against its will to grant the physical use of its tracks to another railroad, is sound, then certainly the Tennessee Central would have no legal right to complain of the existence of these two contracts between the L. & N. and the N., C. & St. L., or to demand anything for itself because of them.

Suppose, however, these two companies should come to the conclusion (which was reached by the Interstate Commerce Commission in this case) that the value and extent of their respective terminals are practically equal, and should, therefore, agree to let them off-set each other so that each would be granting trackage rights to the other in consideration of like trackage rights granted to it; this would not change the status of the transaction and it would be just as legal as it was when each paid the other a money rental.

Up to this time we have assumed that they are operating these terminals separately, each doing its own switching throughout the entire terminals and using its own engines and crews for that purpose. If, in this state of

case, the parties should reach the natural conclusion that the operation of separate crews is expensive and inconvenient, necessarily causing more or less interference in the work of each, and should, therefore, decide to perform this work of switching through one joint agency, representing both companies, but upon terms that each should pay for its own work by paying such proportion of the total joint expense as represented its portion of the work done, certainly the legal status of the arrangement would be unaffected by this change in the method of operating. In the handling of a particular car for one of the roads the act of the joint agency in handling said car would be the act of the company owning and transporting the car, just as much as the act of a jointly employed ticket agent would be the act of the company whose ticket was being sold.

This being true, the relation of the parties would be the same as at the outset.

Where in this progressive process could a third railroad claim that it is wronged? At what point and why can it lawfully assert the *right* either to be admitted to the joint arrangement or to have the constituent companies do for it something else which will accomplish the purpose of giving it access to the joint terminals upon even more favorable terms than the owners?

But the case at Nashville is not that of two companies merely exchanging trackage rights over their individually owned tracks within a city. There the plaintiffs through a holding company formed by them, jointly acquired a parcel of valuable land (over a mile long) and also certain rights of way in the heart of the city of Nashville and jointly constructed thereon a union station and extensive yards at a cost of \$2,535,000. Upon it are 1.07 miles of main track and 30.32 miles of side tracks, including the principal "breaking up" and "making up" yards.

Certainly the Tennessee Central could not object to their jointly using this jointly owned property—and industries are located on it just as upon their other tracks. But manifestly these interior terminals were useless if they could not be reached by the transportation lines of the two roads. Equally plain is it that great confusion and economic waste would have occurred if each road had attempted to operate its own switch engines into and over these central jointly owned terminals. It results, therefore, that the two roads were almost compelled to adopt the plan of also including in the joint property their individually owned tracks, which connected with and formed an inseparable part of the central terminals, and of operating the whole with joint engines and switching crews under one control.

This was accordingly done by the joint owning and agency contract of August 15, 1900 (Vol. II, p. 378), made immediately upon the completion of the union station and central yard improvements, and nearly two years before the Tennessee Central railroad was built.

From the history of the relations between the two companies and the other evidence in the case, all set forth in the court's statement, *supra*, certain facts in connection with this joint arrangement are established beyond question.

- 1. Under it each of the two constituent companies has a legal right to the *physical use* of all the terminals in Nashville (except certain freight houses) owned by the Louisville & Nashville individually, the Nashville and Chattanooga individually, and the two jointly under the long time lease from the Louisville & Nashville Terminal Company. The latter is the central yards, where the union station, with its appurtenances, and the points of interchange and main connecting tracks are located.
- 2. The joint agency (consisting of a superintendent under the joint control of the two General Managers, with all the necessary agents and employes working under the superintendent), operates these terminals as the representative of each company and of both companies, and the equipment, though contributed in equitable proportions by the two, becomes at once the equipment of the joint agency.
- 3. Accurate accounts are kept and at the end of each month a settlement is made whereby each pays its portion of all the joint expenses, including the \$101,400.00 interest and other fixed charges in proportion to the number of cars handled for each and the other bases of calculation provided in the contract.
- 4. All the trains over each line, both freight and passenger, come into the central yards, where they are at once taken in charge by the joint agency which proceeds to break them up and then to make up new trains of cars going to the various parts of the terminals, where

they are again broken up into individual cars and taken to the industries. The same process reversed is followed in gathering up outbound cars which are first taken to the central yards and there made up into trains.

5. This joint terminal service covers five grand divisions of business: (1) All passenger trains entering or leaving the city of Nashville, which includes all services in connection with cleaning and otherwise handling the coaches and engines; (2) the vast number of through trains, passenger and freight, passing between the north and south through Nashville; (3) all freight cars destined to or coming from the depots and team tracks; (4) all cars moving to or from the various industries located upon the terminal tracks; and (5) the management of the union station and all the employes, freight and passenger, serving thereon.

Under this simple, economical and convenient plan it is evident that each road owns all the terminals for its purposes, regardless of whether the legal title is held by one or the other or by the Terminal Company. And, furthermore, by reason of each one paying for the handling of its own car entirely through the terminals, whether it be inbound or outbound, the service in connection with handling such car is really performed by the company which brings it in or carries it out. In other words, whether a car handled in the terminals is to be considered that of the Louisville & Nashville or of the Nashville & Chattanooga depends upon which line gets the transportation haul. If the car comes in over the L. & N. transportation line and is delivered to an in-

dustry in the terminals it is treated as an L. & N. car until the final delivery is made, and so with a car originating at any industry upon the joint terminals which has destined to go out over the Louisville & Nashville. The same is true with reference to the Nashville, Chattanooga & St. Louis. In this way each road actually handles the car with its own employes and equipment, over its own tracks, to or from its own industry and at its own cost. The other company pays nothing in connection with such movements. Neither pays the other any switching charge, and the public does not have to pay any switching charge upon either competitive or non-competitive cars.

(2) In No Event Could the Arrangement at Nashville Constitute a Discrimination Against the Tennessee Central Because of Wholly Dissimilar Circumstances and Conditions.

It is impossible for us to conceive of this joint arrangement operating in any sense as a discrimination against the Tennessee Central, but, if it could be so held, it would not affect the soundness of plaintiffs' position since there is no evidence whatever to show a similarity of circumstances, except the finding of the court and Commission that the physical act of switching for the Tennessee Central can be performed at substantially the same cost as upon their own track. Section 3 of the Act to Regulate Commerce only forbids the giving of an "undue or unreasonable preference or advantage" and requires only the giving of "equal facilities." In the case here presented all the evidence goes to show an utter dissimi-

larity of conditions and circumstances. It is unnecessary to repeat them here. It is enough, by way of recapitulation, to merely mention some of the cardinal ones, namely, that neither receives any service from nor renders any service to the other, but that each owns the right to and does operate its own trains over the terminals leased from the other, and this it does at its own expense; that they assess no switching charge, nor, indeed, any charge against each other and none is charged to the shipper; that they actually own by joint lease the central train yards (costing \$100,000 a year) where the points of interchange with each other and their principal switching yards are located. None of these facts exist in connection with a movement by or for the Tennessee Central. In other words, the difference in circumstances and conditions applies to every feature, except the cost of physical movement, of both operation and ownership.

Furthermore, in pursuing this discrimination theory the Commission is led into declaring, and logically so, that the plaintiffs must switch for the Tennessee Central at confiscatory rates, that is for *cost*, without any return on the property used. This is declared in its opinion (Vol. II, p. 587) thus:

"Under all of the circumstances disclosed we are of the opinion and find that defendants' refusal to switch competitive traffic to and from the Tennessee Central at Nashville on the same terms as non-competitive traffic while interchanging both kinds of traffic on the same terms with each other is unjustly discriminatory, and that so long as defendants switch both competitive and non-competitive traffic for each other at Nashville at a charge equal to the cost of the service, exclusive of fixed charges, the charges imposed for switching Tennessee Central traffic should not exceed the cost of the service performed."

This is confiscatory and illegal because the constituent companies would get nothing to equalize the interest or return on their property, and nothing for overhead expenses. The necessity for the charge being indefinite—the cost of service—is another demonstration of the impracticability, in addition to the illegality, of the Commission's theory of discrimination.

(3) The Joint Terminal Arrangement is Not a "Facility" as that Word is Used in Section 3 of the Act to Regulate Commerce.) If Not, then Section 3 Does Not Apply and the Commission is Without Power to Forbid the Alleged Discrimination here Charged.

Here is the crucial point in the Commission's report and order and in the lower court's decision.

The court in its opinion concedes, as it must (Vol. I, page 70) that the alleged discrimination, which the Commission makes the sole basis of its order, must arise, if at all, under the second paragraph of Section 3 of the Act to Regulate Commerce. This paragraph reads as follows:

"Every common carrier subject to the provisions of this Act shall, according to their respective pow-

ers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Recognizing, as stated, that the Commission's jurisdiction came solely from this statute, the Commission and the court met it squarely and in support of their finding that, as a matter of law, the facts here shown constitute a discrimination, the court, following the Commission, thus states its position:

"And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely concur in the conclusion of the Commission that such joint switching operation is essentially the same as a reciprocal switching arrangement, constituting a facility for the interchange of traffic, between the lines of the two railroads, within the meaning of the second paragraph of Section 3 of the Interstate Commerce Act.

"Being, in effect, a reciprocal switching operation carried on by the Louisville & Nashville and the Nashville & Chattanooga, constituting a facility for the interchange of traffic between these two railroads, it necessarily follows, under Section 3 of the Interstate Commerce Act, that equal facilities must be afforded all other lines for like interchange of traffic, without discrimination."

With this unequivocal statement of the court before us the preliminary question may be illustrated thus:

If carrier A affords a certain facility to carrier B and refuses it to carrier C, can the Commission, in its effort to prevent what it considers discrimination, require A, instead of affording the same facility, to do for C something else, which is in fact wholly different but which the Commission supposes will put C in as good a position as to ultimate results as B.?

Certainly no reason or authority can be found for allowing the Commission to substitute something else for the facility which a carrier gives to one and refuses to give to another. We submit that the requirement of the statute that a carrier afford equal facilities clearly means that whatever it does for one it must do for another and the Commission's order must require it to remove the discrimination either by ceasing to give the facility in question to B or by giving it also to C.

This is not only the correct interpretation of the statute as it is written, but it is the fair and reasonable thing to do. Continuing the illustration, A should be permitted, at its option, to remove the discrimination by discontinuing B's use of the facility or by affording the same one to C; and yet according to the theory adopted in this case, A can be denied this latter option and be compelled to submit to a substitute of the Commission's own making, which may be much more expensive or inconvenient than affording to C the same facility as to B.

Applying this interpretation of the statute to our case it is manifest that if the joint arrangement of plaintiffs be a facility, the denial of which to the Tennessee Central constitutes a discrimination, then the way to remove the discrimination is to order plaintiffs to discontinue the arrangement or else to admit the Tennessee Central to it upon proper terms. But there are two things, either of which will prevent the Commission from validly making this latter requirement: (1) a dissimilarity of conditions and circumstances, in which case there is no unjust or undue discrimination; or (2) the prohibition of some law. While either of these two barriers is sufficient for us, it happens that both exist in this case. The dissimilarity in conditions we have fully discussed herein, particularly in the next preceding section, and we believe it clearly appears from the undisputed evidence that this dissimilarity is fully established, and hence that the Commission's finding of discrimination as a fact is unsupported by substantial evidence. The proviso at the end of Section 3 is the law that conclusively forbids the Commission to order plaintiffs to admit the Tennessee Central to the physical use of their terminal tracks. This effect of the proviso, as declared by the courts, we shall discuss a little later herein.

The Commission clearly saw that it was primarily limited to the alternative of ordering admission for the T. C. to plaintiffs' joint arrangement, but it took the position that if that could be ordered a substitute therefor would be equally valid. But it knew that it must first have the power to order reciprocal trackage rights, before

it could order, in lieu thereof, reciprocal switching; and it accordingly claims that power. It wobbles somewhat in its opinion as to the legal status of this joint arrangement, but unequivocally asserts, as the fundamental proposition, that reciprocal trackage rights over terminal tracks come within the definition of facility as used in Section 3.

While its opinion in one place (Vol. 2, p. 580) declares that "the joint maintenance and operation of the tracks utilized in a sense constitutes the terminal tracks of each road the tracks of the other," in another place the Commission, speaking of the contention of the plaintiffs (defendants in the Commission's proceeding) that the arrangement as to their individually owned tracks was an exchange of trackage rights, says (Vol. II, p. 581):

"We can not agree with defendants' contention that they have merely exchanged trackage rights. But even if they have, we think the term 'facility,' as used in Section 3 of the act, also includes reciprocal trackage rights over terminal tracks, the consequences and advantages to shippers being identical with those accruing from reciprocal switching arrangements."

It may be repeated, in passing, that there is no evidence whatever to show that the consequences and advantages to shippers from reciprocal trackage rights are "identical with those accruing from reciprocal switching arrangements." It is enough to recall that one notable difference, as shown by the uncontradicted evidence, is that under reciprocal trackage rights the shipper pays

no switching charge whatever, the traffic being carried to or from his industry for the regular tariff rate; while under the reciprocal switching plan there is added to the regular rate a switching charge per car which is usually absorbed by the transportation line in the case of competitive cars, but which is universally paid by the shipper on non-competitive cars.

Of course, it is understood that the arrangement of plaintiffs is not made up solely of exchange trackage rights. They have in the case of a large part, and by far the most important and valuable part, of these terminals actually bought them jointly, so that the individually owned tracks which they subsequently contribute to the joint arrangement, thus to that extent exchanging trackage rights, is only a comparatively minor incident, though a necessary one, to the main plan. But if the feature of joint ownership did not exist and there were nothing in this case except the mere exchange of trackage rights by two companies, the above declaration of the Commission, which is the ultimate foundation of its order, is utterly unsound in law. We say this because it is not only supported by no authority, but is definitely condemned by all authority.

The controlling authority is the proviso to Section 3, the statute under which this proceeding was brought. This proviso, following immediately the "equal facilities" paragraph and separated from it by a semicolon, reads as follows:

"but this shall not be construed as refuiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

This proviso is an express limitation imposed upon the Commission's power in the matter of ordering equal facilities. It must always stop short of requiring one road to afford another road physical access to its "tracks and terminal facilities." In other words, the right of a railroad to sell to another railroad (whether for money or other trackage rights or other thing) the physical use of its road, that is trackage rights, and that without incurring a similar obligation to other railroads is thereby ratified and preserved.

Considering it first in the light of the common knowledge of all it is manifest that if one railroad can not give, lease or sell to another railroad the right of physical access to its tracks, commonly known as trackage rights, without thereby authorizing all other railroads to demand, as a matter of right, the same privilege, or the same sort of contract, or even an equivalent substitute, as here ordered, then the custom in vogue throughout the United States of granting trackage rights, having great value and involving enormous sums of money, will have to be discontinued, as railroads will be unwilling to make contracts for trackage rights with such disastrous consequences just ahead.

And all authorities concur in our view of the above proviso to Section 3.

In K. & I. Bridge Co. v. L. & N. R. R. Co., 37 Fed. 567, in which the K. & I. Bridge Co. sought and obtained from the Commission an order requiring the L. & N. R. R. Co. to interchange freight at a certain point of physical connection between the two roads, Circuit Judge Jackson, in declaring said order void because, among other reasons, it was a violation of the tracks and terminals proviso to Section 3 of the act, expressly held that private contracts (such, for example, as the one between the N., C. & St. L. and the L. & N. now under discussion) were not prohibited by the act, saying of the proviso:

"Now, under this last limitation upon, or qualification of, the duty of affording all reasonable, proper and equal facilities for the interchange or for the receiving, forwarding and delivering of traffic to and from and between connecting lines, it is clearly left open to any common carrier to contract or enter into arrangements for the use of its tracks and terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving an undue or unreasonable preference or advantage to such lines, or of discriminating against other carriers who are not parties to, or included in, such arrangements. . No come a carrier can therefore justly complain of another that it is not allowed the use of that other's tracks and terminal facilities upon the same or like terms and conditions which, under private contract or agreement, are conceded to other lines."

This matter of interchanging freight between railroads is now put in the hands of the Commission by an amendment authorizing it to require carriers to make through routes and joint rates, but through routes and joint rates are not involved here and the court's discussion of the proviso, which has never been amended, is as pertinent today as when it was written by Judge Jackson.

This doctrine was adhered to literally in the opinion by Circuit Justice Field in *Oregon Short Line & U. N. R'y Co. v. Northern Pacific R'y Co.*, 51 Fed. 465 (affirmed by the C. C. A. in 61 Fed.), where he said after citing the above-mentioned case:

"It follows from this, as it was decided in that case, that a common carrier is left free to enter into arrangements for the use of its tracks or terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving undue or unreasonable preferences or advantages to such lines, or of unlawfully discriminating against other carriers. In making arrangements for such use by other companies, a common carrier will be governed by consideration of what is best for its own interests. The act does not purport to divest the railway carrier of its exclusive right to control its own affairs, except in the specific particulars indicated."

And so in Little Rock & M. R. Co. v. St. Louis, I. M. & S. R'y Co., 59 Fed. 400, where the court, in discussing this same Section 3, said that, "no common carrier can justly complain of another, because it is not allowed the use of the tracks and terminal facilities of such other railway company in the same manner and to the same extent another is"; and further "that the fact that one connecting railway company has a contract for the interchange

of interstate commerce freight, which involves the use of the receiving railway's tracks and terminal facilities, would not authorize a court of equity to compel the receiving railway to grant a like contract or concession to another connecting company."

These are some of the authorities which show conclusively the fallacy of the Commission's major premise that it can order reciprocal trackage arangements.

It necessarily follows, therefore, that if the joint trackage and terminal arrangement of plaintiffs is beyond the power of the Commission under the "equal facilities" statute, it is lawful for all purposes and can not be used as the pretext for ordering a substitute in the nature of a reciprocal switching arrangement or any other method of indirectly giving the Tennessee Central the benefit of plaintiffs' terminals.

It is worth noting that this proviso to Section 3 of the Act to Regulate Commerce, construed in the foregoing cases, has never been amended. We are aware that it is a mooted question whether the proviso serves to prevent the Commission ordering switching, independent of the question of discrimination, but no such question is here presented. This is a discrimination case, that being the sole ground of the Commission's order. Besides, the Commission decided in the Louisville switching case, supra, that it had no power to order switching, except in the case of discrimination; and in that case the discriminatory act was switching, not granting trackage rights.

(4) The Joint Arrangement of Plaintiffs is Not a "Device" to Evade the Act to Regulate Commerce.

After declaring its conclusion that plaintiffs' "joint switching operation is essentially the same as a reciprocal switching arrangement constituting a facility," the court proceeded (Vol. I, p. 70):

"That each railroad does not separately switch for the other, but that such switching operations are carried on jointly, is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers, could be easily put beyond the reach of the Act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching."

This is a concession that they do not in fact "switch for each other," as that term is ordinarily understood and as the order requires them to do for the Tennessee Central. This being true the reference to the "device" is intended to apply directly to our arrangement, for according to the necessary meaning of the court's language it holds that unless the terminal arrangement of plaintiffs is a "device," then Section 3 does not apply and there is no discrimination. We have seen that Section 3 can not apply in any event, but we will nevertheless consider this additional theory of the lower court.

We respectfully insist that a study of this record disclases no substantial evidence whatever in support of the proposition that this arrangmeent is a device to evade the Act to Regulate Commerce. This word, according to the dictionary, carries the idea of at least impropriety. It is defined as an "artifice," a "strategem." Not a line of proof of such a claim appears in the statement of facts by either the Commission or the court, and we submit that counsel for defendants will find none elsewhere in the record. On the contrary, every fact shows that only considerations of convenience and economy, growing out of the close relationship of the two companies and their joint adventure in the acquisition and construction of terminals, brought about the arrangement.

We will not weary the court with a recapitulation of the facts that irrefutably establish this proposition, but ask indulgence for here mentioning some of the outstanding ones. The entire record bristles with them, and not a one appears on the other side.

In the first place theirs is not "a joint agency to do such reciprocal switching." Reciprocal switching, it will be remembered, is a term that relates only to the switching of cars to and from industries. But here the joint agency takes charge of all trains, passenger and freight, through and local, as soon as they come into the station, and performs all terminal services in connection with them; so also with the making up and preparatory handling of all outgoing trains of every character. The same is true of all local switching between industries in Nashville.

Then, too, this arrangement is not confined, in its physical aspects and extent, to the industrial tracks. It takes in the union station itself and all terminal property of every sort (except certain individual freight houses, which manifestly are necessary for their separate freight), and it embraces the operation of the union station, with its joint ticket office and all other like terminal facilities. Furthermore, it involves not merely the exchange of trackage rights over individually owned tracks, but the *joint ownership*, by lease, of the union station and central yards, property which cost them \$2,535,000.

The inconvenience, waste and danger incident to the separate operation of this jointly owned property (for the station facilities, points of interchange and principal yards are located on it) and the practical necessity of operating them with joint engines and crews and putting into the arrangement their privately owned tracks over which alone there was access to the jointly owned central property—we have already fully commented on.

Another feature of recognized importance is the kinship of the two companies. In the case of Waverly Oil Works Co. v. Pa. R. R. Co., 28 I. C. C. 621, which involved the switching practice at Pittsburg and in which complaint was made of the treatment by the different Pennsylvania lines of the other railroads serving that city, the Commission said of this phase of the case:

"Looking at the present situation as a question of fact, we are not impressed that these Pennsylvania lines unduly discriminate against other lines by declining to accord the same treatment to outside railroads which they accord to one another. While the lines are independently operated, their ownership is identical. These lines have been welded into one system. It seems to us a natural thing, and one of great benefit to the public, that these family lines should treat the industries of Pittsburg as though all these lines which are in fact connected by a common ownership were under a common operation in name as well as in fact. We hold that there is no unjust discrimination arising out of the circumstance that the different members of the Pennsylvania system accord the use of their terminals to one another while refusing it on the same terms to their outside competitors."

This fact of the relationship of the two plaintiffs, one of which owns 71% of the stock of the other, is relevant as a circumstance bearing upon both the propriety and the economic purpose of their joint acquisition and operation of the terminals as well as upon the absence of proof of a device.

But perhaps more convincing than any is the fact that this joint arrangement, which was a gradual evolution beginning in 1872, was fully consummated in 1900, nearly two years before the Tennessee Central was built into Nashville. A brief recital of these steps, which are given quite fully in the court's opinion (Vol. I, pages 62, et seq), may be helpful. In 1872 the Louisville & Nashville acquired from the Nashville & Chattanooga perpetual joint trackage rights over some of the most important terminal tracks involved in the present controversy, paying there-

for \$18,000 per year and other valuable considerations. And this very agreement, even though made eight years before it owned any stock in the N., C. & St. L., provided for the construction of a union depot on the Nashville & Chattanooga's depot grounds.

In 1893 the Terminal Company was formed as the initial step toward the construction of the Union depot. This company acquired much valuable property in the center of the city. Upon it are more than 30 miles of tracks to-day. In April, 1896, the two constituent companies leased to the Terminal Company for 999 years all their individually owned property lying in the vicinity of the central property. In June, 1896, the Terminal Company leased to the two companies jointly for 999 years, all its property. Treating these long time leases as practically carrying the fee this lease put in the two companies jointly the title to all the Terminal Company's property, including the above-mentioned contiguous property which had originally been owned by the two companies separately, but which they had leased to the Terminal Company in the previous April. [It may be explained here that the modification in 1902 of this lease of June, 1896, whereby the legal title of this contiguous separately owned property (subject of course to the mortgage for about two and a half million dollars) was restored to its original owners, done manifestly for taxation purposes, did not affect the title of the property originally owned by the Terminal Company (which is still owned by the two companies jointly) and did not affect the present arrangement, as the tracks on those parcels

automatically went along with their other separately owned tracks into the joint operating arrangement of August, 1900.]

In 1898 the work of constructing the jointly owned central yards and terminal facilities began.

And in 1900, immediately upon their completion, the agreement was made that provided for an exchange of trackage rights over their individually owned tracks, and for the joint operation and maintenance of the terminals, all of which were then jointly owned or possessed.

During all the time these plans were working out the plaintiffs owned the only two railroads serving Nashville. Not until thirty years after the plans were begun and about two years after they were completed, did a third railroad, the Tennessee Central, come to Nashville.

We submit that these uncontroverted facts show conclusively that this arrangement was not a "device" to avoid the discrimination clause of Section 3 of the Act to Regulate Commerce.

(5) This Court Can Review the Commission's Order where its Ultimate Conclusion from Undisputed Facts is Wrong.

This proposition, we think, will hardly be denied in the light of the lower court's approval of it, but it was vigorously controverted in the court below.

Of course, as was indicated by this court in United States v. L. & N. R. R. Co., 235 U. S. 314, and in Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U. S. 541, the courts will not substitute their judgment for that of the Commission in cases where

its conclusions are supported by evidence, but when the facts found do not support the conclusions, or if, as the Supreme Court said in the case of Interstate Commerce Commission v. L. & N. R. R. Co., 227 U. S. 88, 91, "the facts found do not as a matter of law support the orders made," the court will interfere.

The principle of all of the cases is that if the action of the Commission is arbitrary, or is supported by no evidence or no substantial evidence, or is even contrary to the indisputable character of the evidence, the action of the Commission is void. It will be sufficient to quote, merely by way of reminder, from the one case of Interstate Commerce Commission v. L. & N. R. Co., 227 U. S. 88, 91, 92. Here the court enumerates the different kinds of cases where the order is void, citing authorities. It says:

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.' Tangtun v. Edsell, 223 U. S. 673, 681; Chin Yoh v. United States, 208 U. S. 8, 13; Low Wah Suey v. Backus, 225 U. S. 460, 468; Zakonaite v. Wolf, 226 U. S. 272; or, if the facts found do not, as a matter of law, support the order made. United States v. B. & O. S. W. R. R., 226 U. S. 14, Cf. Atlantic C. L. v. North Carolina Corp. Com., 206 U. S. 1, 20; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 301; Oregon Railroad v. Fairchild, 224

U. S. 510; I. C. C. v. Illinois Central, 215 U. S. 452, 470; Southern Pacific Co. v. Interstate Com. Com., 219 U. S. 433; Muser v. Magone, 155 U. S. 240, 247.

"Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order Int. Com. Comm. v. Northern Pacific R'y, 216 U. S. 538, 544. In a case like the present the courts will not review the Commission's conclusions of fact (Int. Com. Comm. v. Delaware, etc., R'y, 220 U. S. 235, 251), by passing upon the credibility of witnesses, or conflicts in the testimony. But the legal effect of evidence is a question of law."

The doctrine is thus well stated in the lower court's opinion in the case at bar, Vol. I, p. 61:

"It is well settled, on the one hand, that a conclusion of the Commission upon a question of fact, such as the reasonableness of a rate or the giving of a preference, whose correctness depends wholly upon a consideration of the weight to be given before it, will not be reviewed by the court; and, on the other hand, that a conclusion which plainly involves, under the undisputed facts, an error of law, or which is shown to be supported by no substantial evidence or to be contrary to the indisputable character of the evidence, thereby likewise involving an error of law, will be so reviewed. Pennsylvania Co. v. United

States, 236 U. S. 351, 361; Louisville Railroad v. United States (D. C.), 216 Fed. 672, 679 (three judges); and cases therein cited."

In this case we assert not only that the Commission's finding of discrimination is "contrary to the indisputable character of the evidence" and "unsupported by any substantial evidence," but even that it is unsupported by any evidence at all involving, in short, an error of law in the conclusion reached from the undisputed facts.

(6) Decision in the Nashville Coal Case Does Not Affect This Case.

The lower court referred to the decisions of itself and of this court in the Nashville Coal Case (216 Fed. 672), reviewing an order of the Commission in 28 I. C. 533 and affirmed by this court in L. & N. R. R. Co. v. U. S., 238 U. S. 1. The finding of the court, however, in that case furnishes no precedent for the court's opinion in this case for the reason that the case there decided was entirely different from the one here presented. That case for the most part related to the rates on coal, but one branch concerned the practice of the carriers at Nashville with reference to switching coal. The charge was that the joint agency would switch all non-competitive freight except coal and that this was a discrimination against coal. The evidence before the Commission relating to the conditions at Nashville was not nearly so full there as here, and the Commission, in its report, specifically found that the L. & N. and the N., C. & St. L. operated their individually

owned tracks independently of each other and switched for each other, saying:

"Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the Terminal Company, and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the Terminal Company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis."

This finding in the light of the evidence in the present case was, of course, wholly incorrect.

When suit was brought in the district court to review and annul the Commission's order, the transcript of evidence taken before the Commission was not introduced, so the court was confined, as to the facts, to the finding of the Commission.

The discussion of the switching question, which was manifestly a subordinate issue in the case, will be found in the latter part of the opinion.

In setting out the *facts*, taken solely from the Commission's report or opinion, as no facts were in the record, the court showed clearly that it understood that the two railroads were independently operating their individually owned tracks and were actually switching cars for each other; and those supposed facts formed the basis of its opinion. For example, the opinion states:

"That both the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway also individually own tracks which they operate independently of each other or of the Terminal Company, and upon which industries are located; that traffic of all kinds is freely interchanged by the Louisville & Nashville Railroad and Nashville & Chattanooga Railway to and from these industries as well as to and from those on the rails of the Terminal Company; that the tariffs of the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway provide that no charge will be made for switching between their respective lines at Nashville, the expense of this service presumably being absorbed by the line bringing in the traffic."

Again in the court's discussion of the effect of the Commission's order, it said:

"Obviously its only effect is to require the petitioners to receive cars of coal from the Tennessee Central Railroad at junction points and to switch and deliver the same to industries along their respective lines, in like manner as they receive such cars from one another and switch and deliver the same, upon a just, reasonable and non-prohibitive switching charge, which they may themselves establish, but which shall be the same as they shall respectively make to one another."

With this wholly erroneous view of the facts, gained solely from the report of the Commission, for the court in its opinion distinctly states that the transcript of the record before the Commission was not filed with it, the

court thus gives one of the questions raised by the railroad;

"(1) That the facts found by the Commission do not, as a matter of law, support the orders made by it."

In their brief to the court counsel for the railroad companies did insist that there was no discrimination at Nashville because the companies would not switch for each other; but this argument naturally fell upon deaf ears since, in addition to the record in the case before the Commission being absent, it was conceded by the railroad companies, for the purpose of that suit, that the facts stated in the report of the Commission were all true. The court, after holding that the Commission had jurisdiction of the subject, simply declared that it was bound by the Commission's finding upon the question of discrimination and said:

"After careful consideration of the evidential facts set forth in the report of the Commission in reference to the switching practice of the petitioners at Nashville, without determining the weight given to such facts, when separately considered, we are of opinion that such facts, when considered as a whole, afford substantial evidence supporting the conclusion of the Commission that such switching practice, which in effect prohibited the interswitching of coal to and from the tracks of the Tennessee Central Railroad, was unreasonably and unjustly discriminatory."

In the light of the difference between the two cases presented to this court, it is plain that the opinion in the Nashville Coal Case affords no aid in determining whether or not, as a fact, according to the evidence now for the first time before this court, the two railroads in question switch for each other, and, therefore, whether or not the discrimination claimed exists.

(7) This Court Has Distinctly Declared the Right of Two Companies to Unite Their Terminals for Their "Common but Exclusive Use."

If there were any doubt as to the legality of the arrangement between plaintiffs at Nashville and of their right to enjoy it without having to share it with the third railroad, it is set at rest by the decision of this court in United States v. Terminal Railroad Company of St. Louis, 224 U. S. 383. There this court held that the arrangement for a combination of all the terminal facilities at St. Louis into one holding company was a violation of the statute for the reason that, because of the geographical conditions at St. Louis, it would be practically impossible for any other railroad to do business in that city unless admitted into the combination. The opinion explained in detail just how and why this would result.

But the court definitely announced the principle that such arrangements, known to be prevalent throughout the country, are ordinarily proper and legal. It said: "It can not be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too onerous, there would ordinarily remain the right and power to construct their own terminals."

But the court immediately distinguishes the ordinary case from the situation at St. Louis, saying:

"But the situation at St. Louis is most extraordinary, and we base our conclusion in this case, in a large measure, upon that fact. The 'physical or topographical condition peculiar to the locality,' which is advanced as a prime justification for a unified system of terminals, constitutes a most obvious reason why such a unified system is an obstacle, a hindrance and a restriction upon interstate commerce, unless it is the impartial agent of all who, owing to conditions, are under such compulsion, as here exists, to use its facilities."

Of course, there is no suggestion that the Tennessee Central is shut out of Nashville by plaintiffs' arrangement. On the contrary it is already in the city of Nashville, and is, and for a number of years past has been, doing business without other inconvenience, so far as this record shows, than the refusal of the two companies, which do jointly own certain terminal tracks, to engage with it in reciprocal switching.

We have tried to present all the features of this case: those of real importance are simple. The Commission's own opinion declares that the joint arrangement, as it is, causes "shippers little direct pecuniary loss" (Vol. II, p. 586), while the uncontradicted evidence shows that to change it, as the city asks, will give the Tennessee Central the net sum of \$190,130.00 per annum, taken from the road-haul revenues which by all standards of right plaintiffs are entitled to earn. This strikes the moral sense as wrong. Accordingly the law, as announced by the Commission itself in the Louisville Switching Case, supra, forbids one railroad to do this wrong to another. How, then, can it lawfully be done to two railroads which build joint terminals and jointly operate them as one? The Commission answers that the joint arrangement constitutes a discrimination. But that answer is complete, for if discrimination were conceded the Commission must have power to remove it, and must do it in a proper way.

If there were no proviso to Section 3 of the Act to Regulate Commerce, the terminal arrangement of plaintiffs at Nashville, jointly owned in part as well as jointly operated, is perfectly natural, proper and legal in itself and could constitute no discrimination against the Tennesssee Central in view of the totally dissimilar conditions and surroundings shown by all the evidence. If plaintiff's arrangement, however, were altogether a mere exchange of trackage rights, and if there were no proviso to Section 3, then a court might under certain circumstances hold that the transaction was discriminatory and

require them to admit the Tennessee Central to a like arrangement, though we hold a different view of this proposition; but no good reason nor authority can be shown in support of the contention that even in that event the Commission could validly order the plaintiffs to cease their own arrangement or else do for the Tennessee Central a thing which is wholly different from what they do for each other.

There are three controlling reasons, therefore, why the action of the Commission and the court in this case is wholly unsupported by the evidence and both tribunals are in error in the ultimate conclusion drawn from undisputed facts. They are these: (1) the plaintiffs' arrangement is not merely an exchange of trackage rights, but is vastly more; (2) the proviso to Section 3 stands there today just as it did when the Act was passed and in the light of its own language and its interpretation by the courts withdraws the subject of trackage rights, reciprocal or otherwise, from the Commission's power over discrimination granted by Section 3; and (3) even if these things were not so, the Commission has here sought to prevent a discrimination by ordering a thing wholly different from the alleged discriminatory acts complained of when it orders reciprocal switching, since the uncontradicted evidence shows conclusively that plaintiffs do not in fact switch for each other, but instead do jointly operate terminals, which are either jointly owned or in which joint trackage rights have been acquired.

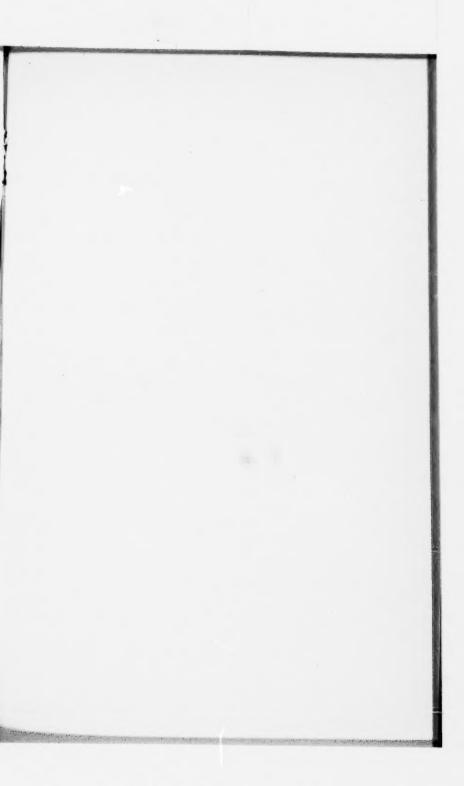
We confidently insist that all three of these propositions are sound, but if any one of them is then the Commission's order is void and the requirement that plaintiffs switch competitive cars for the Tennessee Central is a great wrong. The lower court's approval of this is, we believe, a grevious error which we earnestly ask this court to correct.

Respectfully submitted,
EDWARD S. JOUETT,

Solicitor for Louisville & Nashville Railroad Co.

HENRY L. STONE, W. A. COLSTON, JNO. B. KEEBLE,

Of Counsel.



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IN THE

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1916.

No. 290.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL., APPELLERS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

REPLY BRIEF FOR APPELLANTS.

EDWARD S. JOUETT.

For Appellants.

H. L. STONE,
W. A. COLSTON,
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Of Counsel.

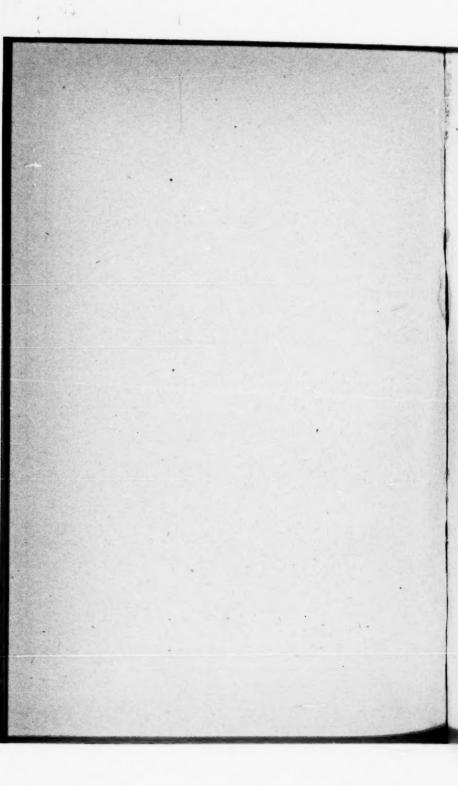
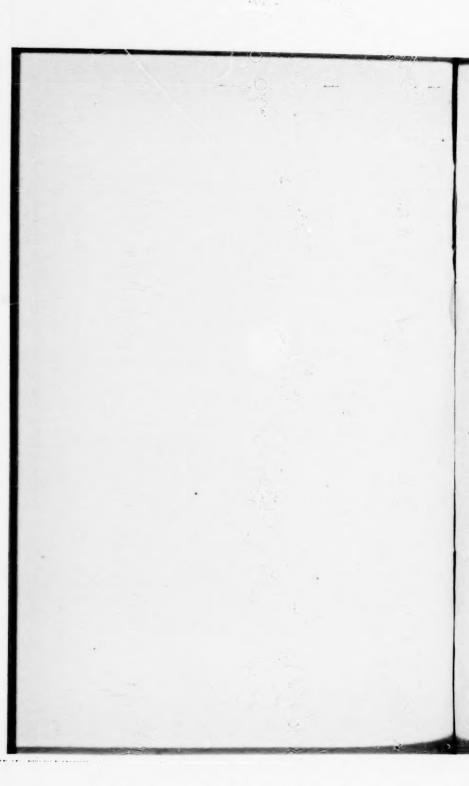


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IN THE

SUPREME COURT OF THE UNITED STATES

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL., APPELLEES.

REPLY BRIEF FOR APPELLANTS.

This is a reply to the briefs filed by the United States and the Interstate Commerce Commission.

THE GOVERNMENT'S BRIEF.

The brief for the Government does not question any of the facts, nor controvert the correctness of appellants' contention that the question here involved is one of law arising from undisputed facts. Neither does it offer any response to the various arguments presented by appellants. It relies solely upon two propositions, stated at page 6 of its brief thus:

"No extended argument of this case is proper, because this court has already, we submit, not only (a) settled the principles involved (Pennsylvania Co. vs. United States, 236 U. S., 351), but has also (b) applied those principles to the facts presented by this record (Louisville & Nashville Railroad Company vs. United States, 238 U. S., 1)."

(Except where otherwise specified, all italics are ours.)

The Pennsylvania Case.

Of its first suggestion, the principles in the Pennsylvania case, the Government, preceding a brief quotation from that case, says only this:

"(a) In the former case, it is again announced with citation of numerous cases, that discrimination is a question of fact for the determination of the Commission (p. 361); that transportation similar to that involved in this case comes within section 3 of the Act to Regulate Commerce as amended (pp. 363-364); that to require such interchange is not a taking of property without due process of law (p. 369), and does not require the carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business (pp. 366, 369)"

Concerning the four propositions in this statement we

reply:

(1) That discrimination is a question of fact for the determination of the Commission we admit, but we have asserted, and the Government does not deny, that where the facts are undisputed it is for the court to say whether the "finding was contrary to the indisputable character of the evidence," or whether the facts, "as a matter of law, support the order made," since "the legal effect of evidence is a question of law." (Quotation, from Interstate Commerce Commission vs. L. & N. R. R. Co., 227 U. S., 88, 91, 92, set out more fully at pages 60, 61, of L. & N. brief.) This is the situation here. The facts are undisputed. We insist that the court misapplied the law to them.

(2) That the "transportation" here sought—namely, that one carrier shall switch cars for another—is similar to that involved in the Pennsylvania case we admit, but that proposition is not in issue. We do not deny that, under the doctrine announced in the Pennsylvania case, if we are switching for each other, we must switch for the Tennessee

Central. The Pennsylvania case involved the simple question of discrimination in switching. At New Castle, Ph., the Pennsylvania Company switched competitive care for three of its competitors, but refused to switch for the fourth, the Rochester Company. The latter applied to the Interstate Commerce Commission for relief, claiming that this was discrimination. The Commission, solely on the ground of discrimination in switching, ordered the Pennsylvania Company to remove the discrimination—that is, switch for the fourth railroad or for none. This the court approved. This second statement of the Government, then, is likewise irrelevant, being wholly aside from the one question involved in our case as to whether appellants do or do not switch for each other, as that expression was used in the Pennsylvania case and all other cases which have been comsidered by the courts or commissions, or, to put it another way, whether they can be required to switch for the Tannessee Central because of their joint terminal arrangements at Nashville.

(3) In the Pennsylvania case that company insisted that the Commission was without power in any event to require it to switch for the Rochester road, because to do so would take its property without due process of law. The court held that the constitutional provision did not apply. We accordingly are making no such contention here.

accordingly are making no such contention here.

(4) Neither will there be found in appellants' briefs any contention that to require us to switch for the Tennessen Central will be requiring us to give the use of our tracks and terminal facilities to another carrier engaged in like business. We are making no such contention, but, as started above, admit the right of the Commission to require us to switch for the Tennessee Central if we are switching for each other.

The Government seems to have wholly misunderstood our argument (L. & N. Brief, p. 44) upon this provise to Section 3 of the Act to Regulate Commerce. That provise reads as follows:

"but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Our insistence is that this proviso limits Section 3 (the section on discrimination that requires the giving of equal facilities) by declaring that it does not mean that a railroad shall be required to admit another railroad to the physical use of its tracks or terminal facilities. We assert, then, as shown by the cases cited in L. & N.'s brief, pages 51-53, that a railroad is free to make contracts covering this physical use of its tracks and terminal facilities by another railroad without being guilty of discrimination in refusing to grant similar privileges to other railroads.

Since, therefore (stating it most strongly against oursolves), what the plaintiffs have done in Nashville is to give each other trackage rights over certain individually ewned tracks for joint use in connection with their central jointly owned terminals, which is perfectly lawful, and since the provise to Section 3 definitely limits the earlier part of the section relating to discrimination by declaring that it does not apply to tracks or terminal facilities, it necessarily follows that there is no discrimination against the Tennosee Central in merely refusing to admit it to like physical use of plaintiffs' tracks and terminal facilities. Yet to give such grees to the Tennossee Central would be the only thing that the appellants are doing for each other, and only thus could they put the Tennessee Central upon anything like the same basis that they occupy with respect to each other's tracks. If, then, it is not entitled to this, neither is it entitled to a substitute for this-the switching of its cars, a thing wholly different from what the appellants do for each ether-simply because that substitute will produce for the Tennessee Central a result somewhat similar in effect to, but wholly different in fact from, the relation existing between the two appellants.

No stronger authority than this very Pennsylvania case can be found in support of the distinction we are here insisting upon. It also clearly recognizes the principle for which we contend, that the proviso to Section 3 stays the hand of the Commission in the matter of, and leaves in the carrier the sole control of, the physical use of its tracks and terminals. From this it results that a contract under which another carrier acquires use of them affords no ground for a third carrier demanding participation in such contract or an equivalent therefor in the way of switching service. The Supreme Court, speaking through Mr. Justice Day, makes this distinction between "switching" and the physical use of terminals in the Pennsylvania case (236 U. S., 368); thus:

"In the present case we think there is no requirement in the order of the Commission amounting to a compulsory taking of the use of the terminals of the Pennsylvania Company by another road, within the inhibition of this clause of Section 3. The order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania Company or to use or occupy its stations or depots for purposes of its own. There is no requirement that the Rochester Company be permitted to store its cars in the yards of the Pennsylvania Company or to make use of its freight-houses or other facilities; but simply that the Pennsylvania Company receive and transport the ears of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania Railroad at the same point."

This was a mere switching service.

Recognizing that the Pennsylvania could be required to do for the Rochester road only what it was doing for its other three competitors, this court said:

> "So, in the present case, all that the order requires the Pennsylvania Company to do is to receive and

transport over its terminals by its own motive power, for the Rochester Company, as it does for other companies, similarly situated, carload freight in the course of interstate transportation" (p. 369).

And, again, in its concluding statement:

"So here there is no attempt to appropriate the terminals of the Pennsylvania Railroad to the use of the Rochester Company. What is here accomplished is only that the same transportation facilities which are afforded to the shipments brought to the point of connection over tracks used in common by the Baltimore & Ohio Railroad and the Rochester Company, shall be rendered to the Rochester Company as are given to the Baltimore & Ohio Company under precisely the same circumstances of connection for the transportation of interstate traffic. All that the Commission ordered was that the company desist from the discriminatory practice here involved, and in so doing we think it exceeded neither its statutory authority nor any constitutional limitation, and that the district court was right in so determining" (p. 371).

So important, however, did Mr. Chief Justice White conceive this distinction to be that lest there should be some misunderstanding of the opinion he filed a dissenting opinion for the sole purpose of making perfectly clear the limited extent to which that case went, by reiterating that it merely requires a railroad to grant the same switching privileges to all railroads alike, and is "concerned alone with that subject, and does not in any degree whatever as a matter of law involve the right of one railroad company to compel another to permit it to share in its terminal facilities."

His statement is as follows:

"The court now holds that this controversy involves merely a switching privilege and the duty of one railroad not to refuse such privilege to another, or at all events if it permits it to one, to allow

it to other roads on terms of equality. By a necessary inference, therefore the decision now made is concerned alone with that subject and does not in any degree whatever as a matter of law involve the right of one railroad company to compel another to permit it to share in its terminal facilities" (p. 372).

The Nashville Coal Case.

The Government's second and only other reliance is the decision in Louisville & Nashville Railroad Co. vs. United States, 238 U. S., 1, commonly known as the Nashville Coal case. This was decided by the courts-the district court in 216 Fed., 672, and this court in 238 U.S., 1solely upon the facts set forth in the opinion of the Commission in 28 I. C. C., 527. As explained in our original brief, that case for the most part related to coal rates to the city of Nashville. Thirteen pages of the opinion deal with this rate feature. Then toward the end of the opinion about two pages are devoted to the purely incidental question of switching coal. The switching branch of that case did not involve the question of switching competitive freight. which is involved here, but related merely to the discrimination incident to the practice of plaintiffs not switching coal for the Tennessee Central when they switched all other non-competitive freight for it. The L. & N. and the N., C. & St. L. claimed that coal, even though non-competitive traffic (that is, coming from points not reached by their rails) was nevertheless a competitive commodity, and hence they did not switch it. The Commission and courts rejected this contention upon two grounds: First, because to switch other non-competitive commodities for the Tennessee Central and not switch coal was a discrimination against coal, and, second, because the Commission held as a fact that they switched coal for each other, and hence discriminated against the Tennessee Central in refusing to switch coal for it. It was this feature of the case which brought up a dis-

cussion of what they did for each other. Whatever may have been the nature of the proof before the Commission none of it ever came to the eves of either the district court or this court, for when the suit was brought to attack the Commission's order the record before the Commission was not made a part of the bill, and was not put in evidence at the hearing. Both the district court and this court, then, accepted, as conclusively established, the facts found by the Commission in its report. This appears in both opinions and is expressly admitted by the Government in this case (Br., p. 10). In fact, according to the opinion of the district court, counsel, who was evidently relying largely upon certain constitutional and other legal defenses to the order, expressly admitted, for the purposes of that suit, that the facts found by the Commission were supported by substantial evidence and hence were not reviewable by the court.

The court thus states it:

"The petitioners did not file the transcript of the record before the Commission, and do not insist, for the purposes of the motion, that the facts found by the Commission were either without substantial evidence to support them or contrary to the indisputable character of the evidence. The sole grounds of the motion for the interlocutory injunction are: (1) That the facts found by the Commission do not as a matter of law support the orders made by it; (2) that the Commission was without jurisdiction to make the orders; and (3) that the enforcement of the orders made by the Commission will result in the taking of petitioners' property without due process of law and in violation of the Fifth Amendment of the Constitution of the United States" (216 Fed., 675).

From statements made by members of the court at argument it is manifest that counsel for appellants in the Nashville Coal case, *supra*, did in his argument discuss the terms of the joint terminal arrangement. Whether induced to this by his zeal or by questions from the court the writer does not know, and in the hurried preparation of this reply, prac-

tically overnight, is without opportunity to ascertain, but there was absolutely nothing in the record from which the court could form any real conception as to that arrangement—its terms, scope, methods, or any other fact from which its legal status and effect could be ascertained.

For convenient reference we insert as an appendix to this brief all of the Commission's report that relates to the switching branch of that case. From this it will be seen that the first paragraph of the report on this feature, making about twenty lines in the report and the only part dealing with the relations of the two companies, constitutes the entire record that was properly before this court upon this joint terminal arrangement. We quote this paragraph here, as follows:

"The Nashville Switching Situation.

"The Louisville & Nashville Terminal Company is a corporation chartered in 1903, and its entire capital stock of \$100,000 is owned by the Louisville & Nashville. Of the \$2,535,000 funded debt, bonds to the amount of \$2,500,000 are outstanding in the hands of the public, the remainder being held in the treasury of the Louisville & Nashville. These bonds are guaranteed by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis. The terminal company owns certains terminal stations, 1.07 miles of main line, and 30.32 miles of sidings. In 1896 all of its property was leased for 999 years jointly to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis at a rental of 4 per cent per annum upon the cost, the amount to be paid by each company being determined on basis of use. The operating expenses are prorated upon the same basis. Both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the terminal company, and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the terminal company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville, Chattanooga & St. Louis."

Without a word of explanation, the statement begins with a description of the Terminal Company—the corporation which has been defunct, except as title holder, since its lease in 1896. There is not a line about the entire joint terminal arrangement, except the above single enigmatical statement about operating expenses. But this is followed immediately by the statement that "both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the terminal company," adding, to show that they are regular industrial tracks, "and upon these tracks industries are located."

No one can understand or reconcile the confusion and conflict of expression here found. It is no wonder, then, that this court referred (238 U. S., 18) to the "complication arising out of joint ownership and the fact that each of the appellants switches for the other." It was, indeed, a complication which could not be unraveled from that record, but the whole situation is perfectly simple in this record, the truth being, as is now indisputably established, that both the elements in the court's dilemma did not exist. There was the joint ownership, but not the switching for each other.

There is not a line nor a word of evidence in this record even tending to show that these two railroad companies "have individually owned tracks which they operate independently of each other," or that between the industries upon such tracks "traffic of all kinds is freely interswitched by the Louisville & Nashville and Nashville, Chattanooga & St. Louis." Exactly the reverse of these facts is irrefutably established by all the evidence in this record. All the individually owned tracks within the switching limits of Nashville have been contributed to this joint arrangement so that each has equal trackage rights over all, and they are operated, none individually nor independently, but all jointly by the joint operating agency. Furthermore, there is neither between these so-called independently owned tracks nor elsewhere any interswitching by the two com-

panies. Neither switches for the other anywhere, but all switching is done by the joint agency. Yet this erroneous finding by the Commission is the very fact upon which the district court and this court based their conclusions of discrimination.

The district court, in setting out the facts upon which its opinion was based, taken from the Commission's opinion, said:

"That both the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway also individually own tracks which they operate independently of each other or of the Terminal Company, and upon which industries are located; that traffic of all kinds is freely interchanged by the Louisville & Nashville Railroad and Nashville & Chattanooga Railway to and from these industries as well as to and from those on the rails of the Terminal Company; that the tariffs of the Louisville & Nashville Railroad and the Nashville & Chattanooga Railway provide that no charge will be made for switching between their respective lines at Nashville, the expense of this service presumably being absorbed by the line bringing in the traffic" (216 Fed., 681).

Again, in discussing the effect of the Commission's order, that court said:

"Obviously its only effect is to require the petitioners to receive cars of coal from the Tennessee Central Railroad at junction points and to switch and deliver the same to industries along their respective lines, in like manner as they receive such cars from one another and switch and deliver the same, upon a just, reasonable and non-prohibitive switching charge, which they may themselves establish, but which shall be the same as they shall respectively make to one another" (216 Fed., 684).

It will also be recalled that there is no switching charge in connection with appellants' joint-terminal arrangement. This court thus stated its understanding of the basis of the Commission's order, which was under attack, and which it approved, thus:

"In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business" (p. 20).

And again:

"It found that each switched for the other and both switched for the Tennessee Central, except as to 'coal and competitive business.' It found that such a switching practice was unreasonable and unjustly discriminatory, and that a 'reasonable practice would permit the switching of coal from the interchange of each carrier to industries on the rails of each other" (p. 17).

In enumerating several things which the Commission did not do the court thus states what it actually did:

"Neither did it direct the appellants to establish a joint rate and a through route with the Tennessee Central. Neither did it order the appellants to give the use of their terminals to the Tennessee Central, but only required them to render to the latter the same service that each of the appellants furnishes the other in switching cars to industries located in and near the yard" (p. 18).

This single statement shows how different the present case actually is from what this court thought the Nashville Coal case was. Elsewhere, also, in the opinion the court mentions several times the fact that the petitioners switch for each other.

The Government in its brief, page 7, nonchalantly asserts of that case that "the record and issues before the court were

substantially the same as presented in this case," and, again, that "the evidence before the Commission and its findings of fact were substantially the same in both cases." These statements are wholly without support for they are entirely outside the record, since the evidence heard by the Commission in the Coal Case is not only not in this case, but was not even in the record of that case, and has never been considered by this or any court.

this or any court.

The case which we are trying today is upon a record of its own, where the issues were clearly made up and ample opportunity was given to both sides to take proof upon those issues, and where the facts are all before the court. It will not, we are sure, be determined by the opinion of this court in an entirely different case involving different issues and different proof, particularly where none of the evidence was presented to the court, but its decision was based solely upon an assumed fact, which the evidence in this case indisputably disproves.

THE INTERSTATE COMMERCE COMMISSION'S RIEF.

The statement of the case, found in the "synopsis and index," doubtless through inadvertence, conveys the impression that the plaintiffs had been switching for each other and discriminating against the Tennessee Central before the joint agency was effected.

To correct this we call attention to the fact, stated in both the Commission's report and the district court's opinion, that the switching arrangements between the L. & N. and the N., C. & St. L. were in existence only prior to August, 1900, at which time the Union Station and other joint facilities were completed, the exchange track arrangement was effected, and the joint terminal operation began. This was nearly two years before the Tennessee Central came into Nashville. This joint owning and operating arrangement

has been in effect continuously since 1900, so that the two constituent companies have never switched for each other since the Tennessee Central was built.

For clearness' sake we here call attention to the fact that Mr. Keeble's definition of the Nashville terminals in the Commission's brief is hardly complete. The full plan under which this joint agency was formed and operated is clearly set forth in the report of the Commission and the opinion of the district court.

Under the title of "Questions Involved" counsel says that, in view of the essential facts being practically admitted, the sole question in this case is: "Did the Interstate Commerce Commission have the power to make the order in question?"

This statement of the question is not strictly correct, for we do not deny the power of the Commission to enter its order requiring switching from the Tennessee Central, if in point of fact the two railroads were each rendering the same sort of service for each other, that is, were switching for each other, because the Commission's power to do so is definitely established in the Pennsylvania case, supra. But if counsel refers to the power in the sense of the legal right to make the order under the facts shown in this case, namely, that the two constituent companies did not switch for each other, but owned and operated terminals jointly each having trackage rights through the joint agency over the tracks of the other, then the proposition is fairly stated, and our contention is that such an arrangement was not a discrimination at common law (A., T. & S. F. Co. vs. Denver, etc., Co., 110 U. S., 668), and in like manner is not a discrimination under the proviso to section 3 (the section on discrimination) of the Act to Regulate Commerce, because the proviso withdraws from the domain of this statutory diserimination at least contracts providing for the physical use of tracks and terminal facilities. If so, of course, plaintiffs could not be ordered to admit the Tennessee Central into their arrangement, and likewise such joint arrangement cannot legally be made the basis of an order to do something

else which would give the Tennessee Central commercial access to the joint terminals, and that upon even more favorable terms than being admitted thereto, since under the proposed switching order it would enjoy them for a nominal switching charge without having to bear any of the cost of construction, maintenance or operation, including the annual \$100,000 interest charge and other overhead expenses.

Taking up the argument of the Commission's brief, we will, for convenience, quote and briefly consider each of the propositions relied upon.

I.

"The Commission's Findings of Fact, if Based upon Substantial Evidence, Are Conclusive."

We do not controvert this doctrine, but we do counsel's statement that, even though the evidence be undisputed, the question of unjust discrimination, as presented in this case, is one of fact. We discussed this at page 59, et seq., of the L. & N.'s original brief. The doctrine is well established, as stated by the lower court in this case, citing, among others, the Pennsylvania case, supra, that—

"a conclusion which plainly involves, under the undisputed facts, an error of lav, or which is shown to be supported by no substantial evidence or to be contrary to the indisputable character of the evidence, thereby likewise involving an error of law, will be so reviewed" (vol. 1, p. 61).

The court is not asked here to substitute its own conclusion of fact for that of the Commission. There is no question as to the facts. The controversy is whether or not the undisputed facts constitute a discrimination such as authorizes the Commission's order requiring the plaintiffs to switch for the Tennessee Central. This question is purely statu-

tory, involving the meaning and application of section 3 of the Act to Regulate Commerce. It is whether a joint owning and operating terminal arrangement is a facility that comes within the operation of the statute, and hence must be furnished equally to another carrier that has not participated in the acquisition, construction, maintenance or operation thereof; or, if a facility, whether it is withdrawn from the operation of the statute by the proviso which forbids requiring a carrier to give physical access to its tracks and terminal facilities. Attached, as it is, to the main statute requiring the giving of equal facilities, it is manifest that this proviso was intended at least to cover the case of a carrier affording physical use of its tracks and terminal facilities to one carrier and refusing it to another.

II.

"The Finding of the Commission that the Louisville Company and the Nashville Company Were in Effect Switching for Each Other Was Supported by Substantial Evidence,"

It is interesting to note that after searching this record of nearly 600 pages, counsel, under this important subsection of his argument, is able to present only two bits of so-called evidence in support of the claim that the plaintiffs switch for each other. First, he quotes (Commission's Brief, p. 11) from a letter of the Third Vice-President of the Louisville & Nashville to T. M. Henderson, Commissioner of the Traffic Bureau of Nashville, of September 4, 1913, in reply to Mr. Henderson's request for reciprocal switching arrangements at Nashville, the following language:

"Reciprocal switching arrangements between railroads means what the term, on its face, implies; that is, approximately equal service and facilities are to be afforded by each of the two or more interested lines. Reciprocal switching arrangements necessarily must mean that the service performed by each for the other shall, to an approximately equal extent, justify the same."

It is unfortunate that counsel did not read the very next sentence, which is as follows:

"That this latter condition does not now exist at Nashville, so far as the respective Tonnesses Control and L. & N.-N., C. & St. L. facilities are concerned, of course, must be quite well known to you, there would be absolutely no reciprocity" (vol. II, p. 187).

From this it will be seen that the "exped services and feedities" mentioned referred to a comparison between show of the Tennessee Central, upon the one hand, and those of the L. & N. and N., C. & St. L. upon the other, and not sebetween the L. & N. and N., C. & St. L. The use of the hyphen between L. & N. and N., C. & St. L. shows that Mr. Smith was treating those two companion as one in the matter of industries and switching facilities, and was comparing the combination with the Tannessee Cantral.

However, even if Mr. Smith's language had been exceptible of the construction that he considered the pinintiffs were exchanging switching facilities, it would not have changed the facts from what they are indisputably shown to be, and the court would apply the law to those facts and not to a casual canclusion from them, even if stated by an official. However, Mr. Smith did exactly the appearing from what he was supposed by counsel to have done.

The next and only other evidence stated as the basis of the claim that plaintiffs switch for each other is the fact that the engines is use by the joint agency are actually exceed, each of them, by one or the other of the two constituent corresponder. From this the argument is drown that on L. 6 N. engine at times hards N. C. 6 St. L. core, and six sees. This point vanishes, however, when it is recalled that the construct for the joint operation of these jointly occurd or construct for the joint operation of these jointly accord or construct for the point aperation of these jointly accord or controlled terminals provided that the control engines should

be contributed to the joint agency by the two constituent members and thereupon become, for the time being, the equal and joint property of the two, for which they paid a rental of 4 per cent of the value to the primary owner. This appears from section 10 of the joint operating arrangement (vol. 2, p. 384), which is as follows:

"X

"The parties hereto shall set apart, allot, and apprepriate solely to the use of Nashville Terminals, in good working order, a certain number of switching engines, fully adequate and competent to perform all the work of switching, pulling, and shifting trains and ears in and about the terminals, of which whole number of engines such of the parties hereto shall furnish a proportion corresponding in economic efficiency to the respective proportions of work to be performed for the parties hereto.

"As compensation or rent for the engines so set spart, allotted, and appropriated for and to terminal uses and purposes, Nadaville Terminals shall pay to the parties hereto, in addition to maintenance and repairs hereby assumed by Nashville Terminals, four per centum per annum upon a robustion of said engines, to be made at the time of allotment by the superintendents of machinery of the parties hereto and a third person to be chosen by the said super-

miteralienta."

Mr. Brace, the superintendent of the joint agency, whose testimony upon this subject is quoted by counsel under this booking, himself refers to this assignment to the joint agency of each company's proportion of the engines needed for yard service. The foregoing shows clearly that when an engine is thus goigned to the joint agency it becomes, while so used, the instrument of the joint agency.

Ш.

"The Finding of the Commission that the Louisville Company and the Nashville Company Were in Effect Switching for Each Other Was Supported by the Decision of This Court in Louisville & N. R. Co. vs. United States, 238 U. S., 1."

We have discussed this case supra in reply to the brief of the Government. We will, however, add the statement here that the court considered the question in that case primarily one of commodities is shown on page 19, where it says:

> "The carriers cannot say that the yard is a facility open for the switching of cotton and wheat and lumber, but cannot be used as a facility for the switching of coal,"

It will be remembered that the yard was not even open for the first-named commodities except when they constituted non-competitive traffic, that is, traffic going to or from points not reached by the plaintiffs' rails, for which accordingly it did not compete.

IV.

"Discrimination by the Nashville Terminals, the Joint Agent of Appellants, is No More To Be Justified under the Act Than Would Re Discrimination by Either of Its Principals."

This proposition badly confuses the issue. The joint agency is not a distinct entity, separate from the two companies. It is simply the quasi-partnership through which the joint employees are controlled and the accounts are kept. It cannot, therefore, he said that the joint agency as such can discriminate against the Tennessee Central, since there is no other railroad with whose treatment that of the Tennessee Central can be compared. In other words, there is not a fourth railroad which the two joint owners admit to their joint arrangement while excluding the Tennessee Central.

Under this heading counsel also discuss what would be the law if the Nashville terminals were, in fact, a terminal company. Since they do not constitute a terminal company, the inquiry is perhaps immaterial, but, in view of one of the members of the court having propounded a similar question to counsel at the argument, we answer that the difference, as was recognized in the Peoria case cited by counsel (St. Louis, S. & P. R. Co. vs. P. & P. U. Ry. Co., 26 I. C. C., 226), is as great as it is in the constitution of the two agencies. The very ground upon which the Commission in that case required a terminal company to switch for all railroads in the city of Peoria was the fact it was formed for that purpose, and that, as it did not engage in road-haul transportation, it had no road-haul revenues to lose by performing switching service for the roads desiring that service. our case the joint agency of the two constituent companies does not hold itself out as a terminal company, but, on the contrary, is distinctly a transportation company, its terminals, like those of all line-haul railroads, being mere aids and incidents to the transportation service.

It is true, as counsel says, that the order of the Commission does not require a consolidation with the joint agency nor the admission of the Tennessee Central to a physical use of its tracks and terminal facilities. Counsel state that the Commission has "merely required that the appellants place the Tennessee Central on an equal footing with the Louisville Company and the Nashville Company in the matter of interchange of track at Nashville." But the order of the Commission which undertakes to accomplish this result confessedly does it solely because of an alleged unjust discrimination, which, it is claimed, grows out of the existing joint-

terminal arrangement of the plaintiffs. The order of the Commission is not, and could not, be a specific direction to the plaintiffs to switch for the Tennessee Central, but merely to cease its alleged discrimination, for, as this court has expressly held, the Commission, in all orders against discrimination, is forbidden to select either alternative, but must leave the option to the carrier—necessarily in this case of switching for the Tennessee Central, or discontinuing its joint-terminal arrangement, the latter a practical impossibility.

V.

"The Nashville Terminals, if Given the Effect Appellants Claim for it, Would Constitute a Monopoly; and the Commission Properly Refused to Give It That Effect."

Both the Commission and the courts have repeatedly held that the Interstate Commerce Commission has no powers in the administration of the anti-trust acts, and it is not claimed that this proceeding was brought under those statutes. Counsel insist that this arrangement "is a clear suppression of competition, a flagrant discrimination against competitive traffic." The basis for this position is counsel's statement that "in the absence of the joint arrangement, neither of those principals might lawfully refuse to switch for the Tennessee Central merely because the traffic offered might have come in or might go out over its own lines." Counsel are in error in this statement, since the Commission itself, in the Louisville switching case, which is discussed, with quotations therefrom, at pages 28 and 29 of the L. & N.'s original brief, distinctly holds that a carrier may lawfully refuse to switch traffic for a competitor, which it could itself handle to or from the destination or origin-in other words, competitive traffic as that term is used in this case and as described in the above statement of counsel. It is held in the

Louisville case, just as it was held in the Pennsylvania case, that the switching of competitive traffic can only be required where the element of discrimination exists—that is, where the carrier doing the switching is voluntarily switching such traffic for some other carrier.

VI.

"The Limitation upon the Power of the Commission in Establishing Through Routes, under Section 15, is Not Applicable in This Case."

Counsel misconceive our position. The assignment of errors and our briefs show that we do not contend that this switching could not be ordered becomes the carriers owning the terminals would thus be required to short-haul their own lines.

The provision in section 15, which forbids the Commission to require a carrier to unite in a through route unless it is allowed its long haul, is an unanswerable argument where, independent of discrimination, one carrier asks that another carrier be required to switch competitive business for it, for the carrier originating the business would be turning over its transportation service and getting merely a switching charge; but it does not apply here, since we concede that under the Pennsylvania case, if these carriers are switching for each other they can lawfully be required to switch for all other carriers in the same city.

VII

"The Commission Has Power to Require the Removal of Discrimination in Whatsoever Guise it May Appear."

Counsel argue that Congress must be presumed "to have realized that carriers would resort to every conceivable device to effect discrimination in evasion of the act." This is a

suggestion that this joint arrangement is a device. Commission did not so find and there is not a scintilla of evidence in the record to justify any such theory. On the contrary, the fact that these two carriers, then the only railroads in Nashville, acquired the property and subsequently built the joint terminals at a cost of more than \$2,500,000 in furtherance of this joint operating plan and that this work was completed and the plan put into effect two years before the Tennessee Central was built in Nashville, is conclusive of this suggestion of a device. It is true that the lower court, but not the Commission, suggests that if this arrangement should be approved as an exchange of trackage rights, it might induce carriers in other cities to switch for each other through the device of an exchange of trackage rights. But, as we have seen, no such case as that is presented here. The exchange of trackage rights only related to the individually owned terminal tracks leading to the central terminals, which they owned jointly and in which they had invested this large sum of money. Whatever may be done by other railroads in the future there is certainly nothing shown in this case to impeach the absolute good faith of this transaction as well as its entire propriety, considered from the standpoint of economy and safety in the operation of the terminals. Besides it is a great accommodation to the public, since all of the 240 industries upon the joint tracks have access to all stations upon both the L. & N. and the N., C. & St. L., without paying any switching charge upon either competitive or non-competitive business. In other words, each railroad owns all of these terminals, and therefore treats them, and properly so, as a part of its own line and applies the simple Nashville rate.

VIII.

"The Order of the Commission Does Not Require Appellants to Give the Use of Their Tracks or Terminal Facilities to Another Carrier Engaged in Like Business."

We do not controvert this proposition, if counsel means the physical use of the tracks and terminal facilities, which meaning is clearly referred to in the quotation given. On the contrary, we insist that the proviso to section three absolutely forbids the Commission requiring the L. & N. or N., C. & St. L. to give the physical use of its tracks and terminal facilities to the Tennessee Central, even though they should give them to each other. But we would remind that these terminals consist only in part of exchanged trackage rights, the principal central terminals being absolutely owned jointly. Our complaint of the Commission's action is that it has taken this perfectly lawful arrangement between these two carriers as the basis for reaching the conclusion that they thereby unlawfully discriminate against the Tennessee Central and orders us to switch for the Tennessee Central. In other words, as stated elsewhere, it declares a lawful arrangement to be an unlawful discrimination, and upon the strength of such declaration, since it does not, and it cannot, order the alleged discriminators to do for the other carrier what they do for each other, it makes that alleged unlawful discrimination the basis for requiring the alleged discriminators to do not the same thing, but something else, for the third railroad—this substitute being even more beneficial to it than the thing the two roads were doing for each other.

As illustrative of the confusion of mind which this case induces even in one who has made a careful study of it, we call attention to the statement of counsel at page 26 of his brief that "the only material difference between the New Castle Switching Case and the case at bar is that the

latter involves a contract between appellants which, it is claimed, gives to each of them trackage rights over the terminal lines of the other, whereas no such contract appeared of record in the New Castle Switching Case." There is not a suggestion in the New Castle Switching Case of an exchange of trackage rights, either by agreement of record or otherwise. On the contrary, it distinctly appears that that case involved merely a switching service. The Pennsylvania Railroad, in the regular way, switched cars for three of its competitors. That is, it moved those cars between the industries on its tracks and the point of interchange with those competitors, both on inbound and outbound shipments. But it refused to switch for the fourth railroad, the Rochester Company. All that the court decided (and it was stated over and over and doubly emphasized by Mr. Chief Justice White's separate opinion) was that the Pennsylvania should switch for the Rochester Company solely because it switched for the other three.

Counsel here state that since this case was tried the switching charge has been litigated and that the Commission has fixed a maximum rate of \$5 per car. Counsel say that this is a simple solution of the difficulties attendant upon compliance with the Commission's order. It is immaterial whether compliance with the order is difficult or easy. The question is whether or not the order is right. But it may be noted in passing that since the two carriers are distinctly required to maintain the same charge against each other that they do against the Tennessee Central, the result will be, contrary to the wishes of the two constituent companies and greatly to the damage of the public, that they will now be required to make a switching charge of \$5 per car, that is, add that much money to the regular Nashville rate, when, under previous conditions, the Nashville rate alone bought the transportation to and from every industry upon the terminal tracks of the appellants.

In the conclusion of the Commission's brief reference is

made to the order. It is not claimed anywhere that the fact that the appellants switch non-competitive traffic for the Tennessee Central affords any ground for requiring them to switch competitive traffic. The two are wholly different. But lest this might not be understood, we state, in supplement to what was said in the original brief at page 30, that when the Commission made the alternative order that appellants should switch for the Tennessee Central competitive and non-competitive traffic upon the same terms, so long as they switched non-competitive and competitive for each other upon the same terms, it meant to cover two things: (1) to require them to do competitive switching, and (2) to require them to do it at the same charge that they were then making for non-competitive, that is, \$3 per car, because of the alleged fact that they were switching competitive and non-competitive for each other upon the same terms.

In bespeaking the court's careful consideration of this case. we remind it not only of the great amount immediately involved—an annual loss of over \$190,000 by appellants in net road-haul revenues, to which, by all recognized standards of right, they are entitled-but also of the fact that if the Commission's order be sustained, it will become a precedent to disturb the status and affect the value of many other terminal arrangements throughout the country. Neither is its novelty to be overlooked, this being the first instance of an attack of this kind upon these well-known and supposedly lawful agencies. And then there is its simplicity, the single problem being, as suggested by the query of a member of the court at the argument, not what are the terms or conditions or history of the arrangement, but, granting that it exists, is it in law a facility under Section 3 of the Act to Regulate Commerce, which, if refused to other carriers, becomes an unlawful discrimination that entitles the outside carriers, solely on that account, to acquire some sort of beneficial interest in or use of these terminals?

We leave this question with the court, earnestly urging

that it be considered upon its own merits, regardless of that other, and wholly separate, case relating to certain switching practices at Nashville, which came up on a motion for a preliminary injunction, principally to test certain constitutional and other legal questions, and was tried without any of the evidence before the Commission, counsel for plaintiff agreeing (but, of course, merely for the purpose of that suit) that the Commission's findings of fact should be taken as proven. And especially do we ask this, in view of the uncontradicted record evidence showing in the instant case that, of the facts thus found by the Commission, and taken as the basis of this court's decision, the two controlling ones-the alleged independent operation of their individually owned tracks, and switching for each otherare absolutely untrue, and in view of the further fact that the order involved in that case lasted only two years, so that no hardship, confusion, or discrimination can result from a different decision in the present case.

Respectfully submitted.

Edward S. Jouett,
For Appellants.

H. L. STONE, W. A. COLSTON, J. B. KEEBLE, CLAUDE WALLER, Of Counsel.

APPENDIX.

This contains all of the report of the Interstate Commerce Commission in Traffic Bureau of Nashville vs. L. & N. R. R. Co. et al., 28 I. C. C., 533-542, which refers in any way to the switching branch of the case.

At the close of the opening statement occurs this sentence: "The question of interline switching at Nashville is also placed in issue and will be treated separately herein."

After the coal branch, covering eleven pages, comes the

switching branch, beginning at page 540.

It is the first paragraph—twenty lines—that contains all that is said about the joint arrangement.

THE NASHVILLE SWITCHING SITUATION.

The Louisville & Nashville Terminal Company is a corporation chartered in 1903, and its entire capital stock of \$100,000 is owned by the Louisville & Nashville. Of the \$2,535,000 funded debt, bonds to the amount of \$2,500,000 are outstanding in the hands of the public, the remainder being held in the treasury of the Louisville & Nashville. These bonds are guaranteed by the Louisville & Nashville and the Nashville, Chattanocga & St. Louis. The terminal company owns certain terminal stations, 1.07 miles of main line, and 30.32 miles of sidings. In 1896 all of its property was leased for 999 years jointly to the Louisville & Nashville and the Nashville, Chattanooga & St. Louis at a rental of 4 per cent per annum upon the cost, the amount to be paid by each company being determined on basis of use. operating expenses are prorated upon the same basis. the Louisville & Nashville and the Nashville, Chattanooga & St. Louis have individually owned tracks which they operate independently each of the other or of the terminal company. and upon these tracks industries are located. To and from these industries as well as to and from those on the rails of the terminal company traffic of all kinds is freely interswitched by the Louisville & Nashville and the Nashville,

Chattanooga & St. Louis.

Prior to 1907 neither of these roads would switch freight of any kind to or from the Tennessee Central, but in that year, "in deference to public opinion," they began switching all noncompetitive traffic, except coal, to and from the Tennessee Central. The charge for this service is \$3 per car. Although both roads are emphatic in asserting that they have never even considered the switching of coal from the Tennessee Central, the Nashville, Chattanooga & St. Louis did have effective rates applicable to and from its interchange with the Tennessee Central under which such a movement could have been accomplished for 60 cents per ton. Some surprise was expressed when this fact was developed at the hearing, and shortly thereafter this rate was can-Complainants aver that this situation unjustly discriminates against coal from the Tennessee Central, that the practice with respect to switching coal at Nashville is unreasonable, and that the charge therefor (effective until shortly after the hearing) is unreasonable. While the switching tariff of the Tennessee Central is similar to those of the Louisville & Nashville and the Nashville. Chattanooga & St. Louis, that road's refusal to switch coal from either of the other lines is in reality a retaliatory measure. It has styled itself a "cross-complainant" and favors this portion of petitioners' prayer. The other defendants insist that to require them to perform this switching would be to compel them to give the use of their terminal facilities to another carrier engaged in like business, in contravention of the proviso of section 3; that their terminals are not now open to any except noncompetitive traffic; and that while coal may come from noncompetitive points, the very nature of the commodity renders it competitive. As to the competitive character of the commodity there is little doubt; but why

this attribute of coal is restricted to that from the Tennessee Central and finds no place with the coal from the Nashville. Chattanooga & St. Louis Tennessee and Alabama fields when it meets the Louisville & Nashville Kentucky coal, or vive versa, is neither clear nor defensible. It may be that these two roads regard themselves as a single entity, due to the ownership by the Louisville & Nashville of more than 70 per cent of the capital stock of the Nashville, Chuttanesson & St. Louis: this would explain but not justify. As we said in Merchants & Mfrs. Asso, of Baltimore v. P. R. R. Co., 23 I. C. C., 474, 476, "Terminals are either open or they are not," and a carrier may not exercise an arbitrary discretion. based upon a strained construction of the proviso of section 3, in saying for what roads and what traffic it will open its terminals and for what other roads and truffic it will decline so to do. In this case the joint and the separately owned terminals of each of these two defendants are open to all of the traffic of the other; are open to all noncompetitive traffic to and from the Tennessee Central event coul. and, up to shortly after the hearing, those of the Nashville, Chattanooga & St. Louis were open as to this coal but at a prohibitive rate.

Our conclusion is that the practice of defendants with respect to switching coal at Nashville is unreasonable and unjustly discriminatory; that the present tariffs of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis unjustly discriminate against shipments of coal from the Tennessee Central and unduly prefer shipments of coal from the lines each of the other. We find that a just and reasonable practice with respect to switching at Nashville to be observed by all defendants will permit the switching of coal from the interchange of each carrier to industries on the rails of the other. Defendants will be required to cause the unjust discrimination herein found to exist and to establish and apply for the future the practice herein found to be reasonable. This disposition of the case is in consumance

with the principle enunciated by the Supresse Coast in U, S. v. Fernical R, R. Lea. of St. Louis. 255 U. S., 180.

The turifie of the Louiseille & Nostreille and the Souliville, Chattarouse & St. Louise precide that an charge will be made for switching between their respective lines at Nostreille, the expense of this service presumably being absorbed by the line beinging in the reaffe. This face was not isvoluped at the hearing, and me proces a make for one is there any testimory teaching upon, the absorption of switching at Noshville. Under their restrained practice on and has been interestiched between the Louisville & Nostreille one the Noshville, Chattarouse & St. Louis on the me hand and the Tennossee Central on the other. A compilance with our order herein will conserve this restriction. We can not entitle puts unjust discrimination with respect to absorption of switching charges and no finding with respect to absorption of switching charges and no finding with respect to absorption of

An order in searchness with those findings will be seemed

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Supreme Court of the United States

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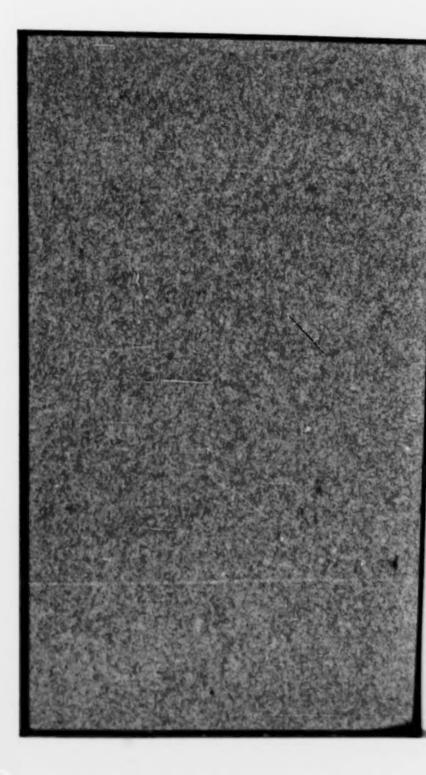
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 290.

LOUISVILLE & NASHVILLE RAILBOAD COM-PANY, ET AL., - - - Appellants,

versus

UNITED STATES OF AMERICA, ET AL., - Appellees.

BRIEF AND ARGUMENT ON BEHALF OF APPELLANT NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

I.

STATEMENT OF THE CASE.

The important question involved in this litigation may be briefly stated as follows: Two railroads at Nashville, Tennessee, jointly own and control a central terminal yard. Each owns separately certain main and industrial tracks connecting with this central yard. The two roads have by agreement placed their separately owned tracks within a prescribed territory together with the jointly owned central yards, under the control of a joint agent which performs all switching operations. Under this agreement the expenses of the joint agency are charged each road according to the number of cars handled for each, respectively. Each car handled is charged to that road which has the transportation haul; that is to say, a car transported by one

road to Nashville is charged to such road, whether it be delivered to an industry located on its separately owned track or to an industry located on the separately owned track of the other road. Again, a car originating at Nashville and transported by one of the roads is charged to such road so transporting it, whether it be loaded at an industry located on its track or an industry on the track of the other road. Each road thereby pays the expenses of switching every car it transports to and from Nashville, though the switching is actually done by the joint agent.

When this agreement was first executed there was no other road at Nashville. Several years after the agreement was put in operation a third railroad entered the city. It had no direct or immediate connection with the jointly owned central yard, but it did connect with one of the old roads at a point about two miles distant from the central yards, and within the territory prescribed for the joint operation of the two roads. The two roads declined to switch competitive traffic for the third road, but they did interchange non-competitive traffic with such road.

The Interstate Commerce Commission, on complaint, held that the operation of the two roads under this agreement was essentially the same as a reciprocal switching arrangement; that the two roads were interchanging traffic with each other, and that they could not refuse to interchange traffic upon substantially the same terms with the third road. (R., Vol. II, pp. 571-588.) An order was entered by the Interstate Commerce Commission to that effect. (R., Vol. II, p. 590.)

This order was assailed by a bill filed by the two roads in the District Court of the United States for the Middle District of Tennessee, upon the ground that neither road was switching for the other; that each had authority to switch its cars upon the

tracks of the other; that each bore the expense of switching its own cars; that there was no switching charge; that the arrangemen did not constitute a "reciprocal switching arrangement;" that there was no unjust discrimination against the third road; and that the practice was not in violation of any of the provisions of the act to regulate commerce or the various amendments thereto. (R., Vol. I, pp. 4-22.)

The District Court sustained the validity of the order of the Interstate Commerce Commission and the cause is now before this Court to review the judgment and decree of the District Court. (R., Vol. I, p. 59.)

II.

SPECIFICATIONS OF ERROR.

The errors assigned are: The District Court erred in holding that the arrangement between the Louisville Company and the Nashville Company was in substance a reciprocal switching arrangement constituting a facility for the interchange of traffic between them; in holding that they were interchanging traffic with each other and so long as they did so it was unjustly discriminatory not to interchange with the Tennessee Central; in not holding the order of the Commission was unwarranted by the evidence; and in denying the application for injunction and dismissing the bill. (R., Vol. I, pp. 84-85.)

TII.

BRIEF OF ARGUMENT.

The courts are authorized to review a conclusion of the Interstate Commerce Commission when "there is no substantial evidence supporting such conclusion, or such conclusion is contrary to the indisputable character of the evidence."

Louisville & Nashville Railroad Co. v. United States, 216 Fed., 672, 679.

Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S., 541, 547, 548.

Interstate Commerce Commission v. Louisville & Nashville Railroad Co., 227 U. S., 88, 91, 92, 100. Florida Line v. United States, 234 U. S., 167, 185.

- 2. There is no substantial evidence to support the conclusion that the plan of operation of the appellants at Nashville, Tennessee, is essentially the same as a reciprocal switching arrangement between them, or that it constitutes facilities for the interchange of traffic between them; that is to say, it does not come within the principle announced in the case of Pennsylvania Co. v. United States, 236 U. S., 351, where it was held that where a railroad company has opened its terminals to one carrier it is anjustly discriminatory not to open its terminals on the same terms to another carrier similarly situated.
- 3. On the other hand, the arrangement is essentially the same as both roads acquiring and operating jointly the entire terminals, or the same as each having exchanged trackage rights with the other. Such an arrangement is not contrary to law, nor is it unjustly discriminatory towards a third railroad to deny it participation in such an arrangement.

Section 3 of the Act to Regulate Commerce.

Kentucky & Indiana Bridge Co. v. Louisville & Nashville Railroad Co., 37 Fed., 567, 628.

Oregon Short Line v. Northern Pacific Railroad Co., 51 Fed., 465, 474, 475.

Little Rock, Etc., Railroad Co. v. St. Louis, Etc., Railroad Co., 59 Fed., 400, 40.

Little Rock, Etc., Railroad Co. v. St. Louis, Etc., Railroad Co., 63 Fed., 775, 778 Pennsylvania Railroad Co. v. United States, 236 U. S., 351, 368, 369, 371.

 There is no illegality in the two railroad companies acquiring and operating jointly, at a given point, terminal facilities for their common, but exclusive, use.

> United States v. Terminal R. R. Association of St. Louis, 224 U. S., 383, 405.

IV.

THE FACTS IN THE CASE.

The facts involved in this controversy are in no way controverted. They were fully stated in the opinion of the Interstate Commerce Commission, which will be found in volume 2 of the record, page 511; they are also fully stated in the opinion of the District Court, 227 Fed., 258. Notwithstanding this, for the sake of clearness it is deemed advisable to give here the chronological history of the case, stating as briefly as possible the main facts upon which the order of the Commission was predicated. The appellants in this cause are the Louisville & Nashvilleville Railroad Company, which will hereinafter be mentioned as the Louisville Company; the Nashville, Chattanooga & St. Louis Railway, which will hereinafter be spoken of as the Nashville Company, and the Louisville & Nashville Terminal Company, which will hereinafter be called the Terminal Company, which will hereinafter be called the Terminal Company.

1. The Louisville Company.

The Louisville Company has two lines of road entering the city of Nashville, one coming into the city from the north, and the other from the south. § (R., Vol. II, p. 571.)

The northern line of the Louisville Company when originally constructed, and for many years thereafter, had its terminus on the west bank of the Comberland River. At this point it had its station. The original terminus of the southern line was in the southern part of the city, where it had terminal yards. The distance between these two termini was several miles, and for a long time the Louisville Company had no line connecting them. (R., Vol. II, p. 272.)

2. The Nashville Company.

The Nadwille Company has two main lines of its milroud entering the city of Nashville. One of those extends from Nashville to Chattanooga, and the other from Nashville, Tennesses, in a westerly direction through the State. The terminal yards of these reads were in the central portion of the city, about midway between the termini of the two reads of the Louisville-Company. (R., Vol. II, pp. 523-522.)

Oranections Between The Louisville Company and the Maskville Company.

In order that the two lines of the Louisville Company might be connected by a track, that company and the Saskville Company entered into an agreement on May 1, 1972, under which the Nashville Company gives to the Louisville Company a make of way for the perpetual use of a milroad track extending from the terminals of the northern line of the Louisville Company to the terminals of the southern line in the southern part of the sity. (R., Vol. II, pp. 579-574.)

4. Mintery of the Turnical Geospecy.

In the year 1905, in order in facilities the sensembles of sensembles and sensembed terminal facilities, the transmission offeriod the Louiseville & Nadwille Terminal Computer makes an art present by the General Assembles of Terminass. On April 27, 1906, the Louiseville Computer and the Xadwille Computer bened to the Torontal Congress tracts of ground and appears transver thereon which such of these respectively result assess or in the immediate recipity of the terminal grounds of the Nachreth Company. In this base the Transmitting and tracttically to construct upon these produces as based to be set of tracts of ground to be accord by it by particular tracts of ground to be accord by it by particular tracts of ground to be accord by it by particular tracts of ground to be accord by it by

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 borrow money for the acquisition, construction, maintenance, etc., of the terminal facilities, and to issue and dispose of its bonds, and to mortgage its corporate property. It was also authorized to lease to any railroad company or railroad companies its freight and passenger depots, terminal facilities, etc. Railroad companies leasing said terminal facilities were authorized severally or jointly to guarantee the principal and interest on such bonds as might be issued by the Terminal Company. (R., Vol. II, pp. 501-502.)

The Terminal Company on June 21, 1898, entered into a contract with the city of Nashville, under and by which the terminal facilities were constructed by and with the consent of the city. Certain streets were closed and others were opened, and viaducts were provided for. It was understood at the time such facilities were being constructed that they would be used under the lease above mentioned by the Louisville Company and the Nashville Company, and these companies guaranteed to the city of Nashville that all the obligations undertaken by the Terminal Company in said contract would be performed. (R., Vol. II, p. 577.)

Under the above contracts, the Terminal Company constructed the union passenger station, freight depots, switch yards, and various other terminal facilities, all of which had been leased, as has been hereinbefore mentioned, to the two railroad companies under a contract hereinbefore mentioned, to the two railroad companies under a contract dated June 15, 1896. The improvements cost a large sum of money and were completed in 1900.

History of the Switching Arrangements Between the Louisville Company and the Nashville Company.

Prior to the construction of these terminal facilities, there was a reciprocal arrangement for switching between the Louisville Company and the Nashville Company. A car coming in over the Nashville road destined to an industry located upon the Louisville Company's tracks was delivered to the Louisville Company at a certain point in the city, and from there switched by said company to the industry to which it was consigned. Cars coming in over the Louisville Company's tracks, destined to an industry on the tracks of the Nashville Company, were delivered at certain points to the Nashville Company, and by it transported with its own engines and crews to the industry on its line.

The same course of interchange of switching was followed between these two companies as to carloads originating in Nashville and destined to other points.

There was a uniform charge of two dollars per car. On competitive traffic, this two dollars switching charge was absorbed by the road-having the transportation haul. On non-competitive traffic the switching charge was paid by the shipper or consignee. (R., Vol. II, p. 575.)

This system of interchange of switching was an expensive one. There were no common terminal yards at which such interchange could be made. Each company was compelled to maintain its own switch engines and crews, and each had to maintain its own interchange tracks, separate and distinct from the other. This method of handling the business was so unsatisfactory that after the construction of the terminal facilities by the Terminal Company the two roads undertook to economize and bring about a more perfect system of handling freight at Nashville, and this resulted in the operating agreement known in the record as the "Nashville Terminals".

6. Nashville Terminals.

On August 15, 1900, the two railroad companies entered into

an agreement creating an organization known as the Nashville Terminals, for the operation, maintenance and conduct of the business of the terminals at Nashville. The agreement embraces all the property, improvements, buildings, erections and superstructures leased by the two companies from the Terminal Company. The Louisville Company contributed and set apart to the Nashville Terminals organization certain of its property described in said agreement, and the Nashville Company did likewise. It was to be managed by a Board of Control, consisting of three members, to-wit: the Superintendent of the Nashville Terminals, and the General Managers, respectively, of the railroads. It provides in detail as to maintenance and operation, and the expenses of the organization were to be divided between the two roads upon a wheelage basis. (R., Vol. II, p. 575.)

Articles V and VI of this agreement, found in Vol. II, page 382, provide that whatever expenses may be legitimately incurred in the maintenance and operation of the Nashyille Terminals shall be apportioned between "passenger," "house and private sidings" and "train yards."

Article V shows what should be charged to the "passenger" account, and what shall be charged to the "house and private sidings" account. Then it is provided that all other expenses of maintenance and operation shall be charged to the "train yards" account.

Article VI sets forth how this expense is to be apportioned between the two roads. The total expense for maintenance and operation charged to "passenger" account is apportioned between the two roads in the same proportion that the total number of passenger, express, baggage and mail cars, private cars and sleepers, and passenger locomotives handled for each bears to the whole number handled for both.

The expense for maintenance and operation charged to "house and private sidings" is to be apportioned between the roads in the same proportion as the total number of cars placed or withdrawn from house and private sidings, bulk or team tracks for each of the roads bear to the whole number of cars placed or withdrawn for both.

The total expense for maintenance and operation charged to "train yards" is to be apportioned between the parties in the same proportion that the number of cars of all kinds and locomotives hauling trains received and forwarded for each of the parties bear to the whole number of cars of all kinds and locomotives hauling trains received and forwarded.

In other words, it will be observed that the total expense of maintenance and operation is to be apportioned between the two roads according to the use which each road makes of the Nashville Terminals.

7. The Method of Operation in the Nashville Terminals.

The trains of both railroads come into the central train yards. There they are broken up, and cars destined to various industries at Nashville are carried to certain assembling districts, and thence switched to their proper places.

As to outgoing business, cars are brought into these central train yards and the trains are made up and then leave for their destinations.

All of this work in breaking up and making up trains and distributing cars is performed through the service of the joint agent, the Nashville Terminals. There is no delivery made by one road to the other. (R., Vol. II, pp. 386-391.)

There is no switching charge paid by either road, or by either the shipper or the consignee. Each of these two roads reaches the industries located upon these tracks within the territory of the Nashville Terminals. As stated above, each road at the end of the month pays for the service of moving its own cars. This is arrived at by requiring each road to pay the joint expenses in proportion to the number of cars handled.

8. The Tennessee Central Railroad Company.

At the time this arrangement of the Nashville Terminals was entered into there was no other railroad in the city of Nashville than the Louisville Company and the Nashville Company.

The Tennessee Central Railroad Company constructed a road into Nashville in 1901-2.

There was no interchange of traffic between the new road and the two old roads prior to 1907. During the year 1907 the Louisville Company and the Nashville Company began to interchange with the Central Company non-competitive traffic, except coal traffic, at a uniform charge of three dollars per car.

The Central Company connects with the line of the Nashville Company at Shops Junction, about two miles west of the train yards belonging to the Louisville Company and the Nashville Company, as already indicated. The Tennessee Central connects with the Louisville Company at Vine Hill on the main line, several miles south of these yards. It has no connection whatsoever with the train yards or central terminal property of the two old roads. (R., Vol. II, p. 572.)

9. Complaint Filed with the Interstate Commerce Commission.

On January 17, 1914, the city of Nashville and the Traffic Bureau of that city filed a complaint with the Interstate Commerce Commission, whereby they sought to have that Commission to require the Louisville Company and the Nashville Company to switch cars of competitive traffic between the industries on their respective tracks and points of connection with the Tennessee Central Railroad Company, and to require the Tennessee Central to perform the same service for the Louisville Company and the Nashville Company.

The case was finally submitted October 22, 1914, and on February 1, 1915, the Interstate Commerce Commission rendered its opinion and made an order in the case.

10. Report of the Interstate Commerce Commission.

The Interstate Commerce Commission in its report stated substantially the facts that have already been set forth herein. Its conclusions are indicated from the following extracts:

"Defendants unquestionably interchange traffic with each other and without distinction between competitive and non-competitive traffic. The cars of both roads are moved over the individually owned terminal tracks of the other to and from industries on the other, and both lines are rendered equally available to industries located exclusively on one. The movement, it is true, it not performed immediately by the road over whose terminal tracks it is performed, but neither is it performed immediately by the road whose cars are moved. It is performed by a joint agent for both roads, and that being so, we are of the opinion that the arrangement is essentially the same as a reciprocal switching arrangement, and accordingly constitutes a facility for the interchange of traffic between, and for receiving, forwarding, and delivering property to and from defendants' respective lines, within the meaning of the second paragraph of section 3 of the act. The joint maintenance and operation of the tracks utilized in a sense constitutes the terminal tracks of each road the tracks of the other, but inasmuch as both roads contribute nearly the same track mileage and defray the joint expenses in proportion to the number of cars handled for each, the arrangement cannot differ materially in ultimate consequence from an arrangement whereby each road performs all switching over its own tracks and interswitches traffic with the other. The Louisville & Nashville contributes 8.10 miles of main and 23.80 miles of side tracks; the Nashville, Chattanooga & St. Louis, 12.15 miles of main, and 26.37 miles of side tracks. We cannot agree with defendants' contention that they have merely exchanged trackage rights. But even if they have, we think the term 'facility,' as used in section 3 of the act, also includes reciprocal trackage rights over terminal tracks, the consequences and advantages to shippers being identical with those accruing from reciprocal switching arrangements" (Italics ours.) (Vol. I, pp. 56-57.)

"Since defendants interchange traffic with each other, they cannot refuse to interchange traffic upon substantially the same terms with the Tennessee Central, provided the circumstances and conditions are substantially the same, and defendants are not required 'to give the use of their tracks or terminal facilities' to the Tennessee Central within the meaning of the concluding proviso of section 3."

"The only use of defendants' 'tracks or terminal facilities' asked by complainants for the Tennessee Central is the use incidental to the movement of Tennessee Central cars by defendants to and from industries on defendants' tracks. No use by Tennessee Central trains is asked nor any use of defendants' freight depots or team or storage tracks. In the latter case defendants' tracks would be used for transportation conducted by the Tennessee Central. In the case of the use actually asked defendants will conduct the transportation, and the difference is more than a mere difference in degree.

"Most of the industries involved are situated from 2 to 7 miles from Shops Junction. The service asked is a railroad haul, and in our opinion constitutes transportation.

as defendants tacitly concede when they argue that the local rates to and from Shops Junction and Vine Hill at which they had moved Tennessee Central competitive traffic are transportation rates for transportation to and from local points. Section 1 of the act requires railroads subject to the act to furnish transportation, including the transportation of cars of connecting carriers. Since adequate provision is made for the return of cars interchanged and for compensation for their use, and the use of tracks incidental to transportation conducted entirely by the carrier whose tracks are used is the very use which railroads are constituted to afford, no property is 'taken' by these provisions. G. T. Ry. Co. v. Michigan Ry. Comm., 231 U. S., 457; C. M. & St. P. Ry. Co. v. Iowa, 233 U S., 334; C., I. & L. Ry. Co. v. Railroad Commission, 95 N. E., 364; Pa. Co. v. U. S., 214 Fed., 445; St. L., S. & P. R. R. Co. v. P. & P. U. Ry. Co., supra." (Italies ours).

(R., Vol. II, pp. 580-587.)

11. The Order of the Interstate Commerce Commission.

The order of the Commission is as follows:

"It is ordered, That defendant Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby notified and required to cease and desist, on or before May 1, 1915, and thereafter to abstain from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, Tennessee, on the same terms as interstate non-competitive traffic, while interchanging both kinds of said traffic on the same terms with each other, as said practice is found by the Commission in its said report to be unjustly discriminatory.

"It is further ordered, That said defendants Louisville & Nashville Railroad Company; Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby, notified and required to establish, on or before May 1, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the switching of interstate traffic to and from the tracks of the Tennessee Central Railroad Company at said Nashville, rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city, as said relation is found by the Commission in its said report to be non-discriminatory." (Italies ours.)

(R., Vol. II, pp. 589-590.)

12. Proceedings in the District Court.

Appellants filed their petition in the District Court of the United States for the Middle District of Tennessee assailing the order as being unwarranted under the facts, and made appropriate application for an injunction. Without detailing the various proceedings in the District Court, it is sufficient to state that the application for injunction was denied and the petition was dismissed. (R., Vol. I, p. 81.) An appeal was prayed and allowed.

V.

ARGUMENT.

The case seems to be this: The Louisville Company and Nashville Company have jointly acquired at Nashville, at an enormous cost, a central terminal yard with which the lines of both companies have direct and immediate connection. These two companies conceived the idea of annexing to this jointly owned central yard the tracks of each within a prescribed district, and to operate through a joint agent the entire terminal thus created. The expense of maintenance and operation is divided between the companies according to the use made by each of the terminals. This arrangement was in operation when a third railroad, the Tennessee Central Company, was constructed into Nashville, which railroad tapped the Nashville Company's track within the prescribed terminal district. Louisville Company and The Nashville Company refused to switch cars of competitive traffic and from this connection and to and from industries located within their terminal district. The Interstate Commerce Commission upon complaint has held that by this arrangement each of these companies have thrown open its own terminals to the other, and so long as the arrangement was continued each must switch for the Tennessee Central.

The contention of these appellants is that they are not interchanging traffic with each other, but that each is handling its own traffic and delivering it to each industry within the terminal district through a joint agent to be sure, but at its own expense; that neither has switching charges against the other; that no switching charge has been filed with the Interstate Commerce Commission; and that the plan of operation does not bear the slightest relationship to a reciprocal switching arrangement, in which case one road performs a service for another at its own expense, on its own track, through its own switching crew for a switching charge which is either paid by the shipper or consignee or by the carrier for which the switching is done.

A.—The Courts are Authorized to Review a Conclusion of the Interstate Commerce Commission when "There is No Substantial Evidence Supporting Such Conclusion, or Such Conclusion is Contrary to the Undisputable Character of the Evidence."

The above proposition is so well sustained by the decisions of this Court that it is only necessary to call attention to the language of Mr. Chief Justice White, in the opinion in the case of Florida Line v. United States, 234 U. S., 167, 185, as follows:

"While a finding of fact made by the Commission concerning a matter within the scope of the authority delegated to it is binding and may not be re-examined in the Courts, it is undoubted that where it is contended that an order whose enforcement is resisted was rendered without any evidence whatever to support it, the consideration of such a question involves not an issue of fact, but one of law which it is the duty of the Courts to examine and decide. (Int. Com. Comm. v. Louis. & Nash. R. R. Co., 227 U. S., 88, 91, 92, and cases cited.)" (Italies ours.)

See also:

Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U. S., 541, 547, 548.

Interstate Commerce Commission v. Louisville & Nashville Railroad Co., 227 U. S., 88, 91, 92, 100. Louisville & Nashville Railroad Co. v. United States,

216 Fed., 672, 679.

Pennsylvania Co. v. United States, 236 U. S., 361.

B.—There is No Substantial Evidence to Support the Conclusion that the Plan of Operation of the Louisville Company and Nashville Company at Nashville is Essentially the Same as a Reciprocal Switching Arrangement Between Them.

The Interstate Commerce Commission in its opinion emphasized the proposition that the two railroad companies were in-

terchanging traffic with each other. The Commission says: "The movement, it is true, is not performed immediately by the road over whose terminal tracks it is performed, but neither is it performed immediately by the road whose cars are moved. It is performed by a joint agent for both roads, and that being so, we are of opinion that the arrangement is essentially the same as a reciprocal switching arrangement, etc." (R., Vol. II, p. 580.) Again the Commission says: "Since defendants interchange traffic with each other, they cannot refuse to interchange traffic upon substantially the same terms with the Tennessee Central, provided the circumstances and conditions are substantially the same and defendants are not required to give the use of their tracks for terminal facilities within the meaning of the concluding proviso of section 3." (R., Vol. II, p. 581.)

The same idea is emphasized in the opinion of the District Court. That Court says:

"The operation jointly carried on by the Louisville & Nashville and the Nashville & Chattanooga under the Terminals agreement is not a mere exchange of trackage rights to and from industries on their respective lines at Nashville, under which each does all of its own switching at Nashville and neither switches for the other. It is, on the contrary, in substance and effect, an arrangement under which the entire switching service for each railroad over the joint and separately owned tracks is performed jointly by both, operating as principals through the Terminals as their joint agent; each railroad, as one of such joint principals, hence performing through such agency switching service for both itself and the other railroad."

(R., Vol. I, pp. 69-70.)

Again it is said:

"And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely con-

cur in the conclusion of the Commission that such joint switching operation 'is essentially the same as a reciprocal switching arrangement,' constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of section 3 of the Interstate Commerce Act."

(R., Vol. I, p. 70.)

The contention of the appellants is that the method of operation does not bear the slightest resemblance to a reciprocal switching arrangement. Appellants say that in substance each road moves its own cars with its own engines and crews, and at its own expense. While it is not strictly true that each road handles its own cars with its own engines and crews, but by joint agent, yet the purpose of the arrangement is that the railroad whose cars are being moved shall assume all of the expense and risk of moving them. The joint agent while moving the cars of one railroad is the agent of that railroad.

The term "reciprocal switching" is in general use in the United States, and has a definite and precise significance.

Under such a reciprocal switching arrangement the carrier performing the *transportation haul* does *not perform* the switching service.

The carrier enjoying the transportation haul delivers at the point of destination the car to the "switching" carrier, and the latter receives, handles and delivers it to the industry located upon its track. It thus has possession of the car, moves it with its own engine and crew, is responsible for it while in its possession, and bears the entire burden, cost and responsibility of the switching service.

On the other hand, the carrier performing the switching service as to outbound freight, takes the car from the point where it is loaded upon its track, moves it with its own engine and crew and delivers it to the earrier which is to perform the transportation haul.

The entire expense of this switching is borne, not by the carrier having the transportation haul, but by the carrier performing the switching service.

The charge which is made by the switching carrier is ordinarily a uniform amount per car, and not necessarily proportionate at all to the expense which the switching carrier incurs in the performance of the service.

When two carriers thus switch for each other at any particular point, there is a "reciprocal switching arrangement." The real consideration for such an arrangement is not the uniform charge per car; but grows out of the fact that each performs for the other a similar service approximately the same in extent.

The switching charge which, as stated above, is, as a usual thing, a uniform charge per car, is not intended to be proportionate to the expense incurred. One car may be switched three hundred yards, another one three miles. The charge per car, however, is usually the same in each instance.

The Interstate Commerce Commission, in describing a situation of reciprocal switching at Chicago, in the case of *Hammerschmidt & Franzen* v. Chicago & Northwestern Railroad Co., 30 I. C., 73, says:

"The scheme is based upon a schedule of reciprocal charges under which the terminal carriers switch for one another at substantially uniform rates or charges, which are fixed regardless of the expense or cost of the service performed."

The plan of operation at the Nashville Terminals does not bear the slightest resemblance to a reciprocal switching arrangement. If the Louisville Company brings a car into Nashville destined to an industry upon the tracks of the Nashville Company, it does not deliver such car to the Nashville Company; the Nashville Company does not pay the expense of switching the car to the industry upon its track; the Louisville Company does not pay the Nashville Company any switching charge for such movement; such car is moved by the Nashville Terminals, a joint agent, at the expense of the Louisville Company; the Louisville Company, in fact and in law, has possession of the car until delivered; the Nashville Company in fact and law has no possession of the car, and is under no obligation with respect to such car; the Nashville Company never becomes the carrier of such car.

As nearly as any system of bookkeeping can determine, the Louisville Company pays the actual expense of moving this car to the industry upon the tracks of the Nashville Company, including the wages of the crew, the coal consumed in the engine, the wear and tear of the track, and the hire of the engine.

The same state of facts exists as to a car loaded at an industry upon the tracks of the Nashville Company and to be transported by the Louisville Company. The Nashville Company does not take possession of this car; it does not move it with its engine; it does not pay the expense of moving it; but, on the other hand, the Louisville Company takes charge of the car, puts it in its train, and pays the expense thereof as nearly as the same can be estimated.

W. P. Bruce is the Superintendent of the Nashville Terminals. He testified as follows:

"Is it or not true that in the operation of the Nashville Terminals the Louisville & Nashville Railroad Company switches for the Nashville, Chattanooga & St. Louis Railway or the Nashville, Chattanooga & St. Louis Railway switches for the Louisville & Nashville Railroad?

"No. The Nashville Terminals switches for both as the direct agent of each.

"My question was whether either switches for the other? "They do not."

(Vol. II, p. 387.)

Again he testifies:

"Q. How is the expense of the service divided as between the two roads?

"A. It is divided on the basis of the number of cars handled for each."

(Vol. II, p. 387.)

It is submitted therefore that this case cannot be governed by the principles announced in the case of *Pennsylvania Co.* v. *United States*, 236 U. S., 351, because in that case the Pennsylvania Company actually received the cars of one carrier and switched them to the industries located upon the Pennsylvania's tracks at a certain switching charge, which was on file with the Interstate Commerce Commission, and declined to perform the same service for another carrier having a connection with the Pennsylvania road at the identical point where the former carrier had a connection.

C.—The Arrangement is Essentially the Same as if Both Roads had Acquired and were Operating Jointly the Entire Terminal, or the Same as Each Having Exchanged Trackage Rights with the Other.

In elaborating the above principle let us suppose that not only the central terminal yard belongs to these two roads jointly, but that all the tracks that were put into the Nashville Terminals agreement were owned jointly by the two roads, and let us suppose further that each of the two roads used its own crews and engines in delivering cars to industries located upon these jointly owned tracks. Manifestly, such an arrangement could not be said to be a "reciprocal switching arrangement," nor could it be said that either road had opened its terminals to the other road. The two roads under such circumstances could decline to switch for the Tennessee Central, because neither road is switching for the other, and the switching is not being done by a joint agent.

Let us suppose now that the two roads, instead of having a separate crew and engines should, for the purpose of economy, employ a joint agent to deliver the cars of both roads to the industries to which they were destined. It would seem that there is nothing in the Act to Regulate Commerce to prohibit a co-operation of this character, for the purpose of economy. The two roads would under such circumstances divide the expense of operation precisely as it is under the plan appearing in this record. Could it be said that if the two roads did own jointly the entire terminal district and employ a joint agent to perform the switching for each that it must also on demand furnish such service to the Tennessee Central? This Court, in the case of United States v. St. Louis Terminal, 224 U. S., 405, said:

"It cannot be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be admitted upon terms or excluded altogether. If such terms were too onerous, there would ordinarily remain the right and power to construct their own terminals."

It is understood, of course, that the above language does not reach the question now under discussion, because the order of the Interstate Commerce Commission does not in terms require that these appellants should permit the Tennessee Central, with its own engines and crews, to enter upon their tracks. It would seem clear, however, that if the two roads owned jointly these tracks, they could not be guilty of unjust discrimination against the Tennessee Central, because they declined to switch the cars of the Tennessee Central over such tracks. The arrangement appearing in this record is substantially the same as if the two roads owned jointly all the tracks in the terminal district and operated the same by a joint agent.

But it is said in response that only the central terminal yard is jointly owned, and that the other tracks in the terminal district belong separately to the two roads. But in reply to this it may be said that each road has thrown its separately owned tracks into a common use so that each road may go upon the tracks of the other for the purpose of making deliveries.

In further elaboration of the above idea, let us return to the period before the organization of the Nashville Terminals.

At that time there was a reciprocal switching arrangement. Suppose now that the Nashville Company should enter into negotiations with the Louisville Company and secure by contract the right to enter upon the latter's tracks with its own switching crew and engine and deliver cars which the Nashville Company had brought to the city of Nashville to be delivered to the industries located upon the Louisville Company's tracks. It pays the Louisville Company an annual rental for such privilege or trackage rights.

After having secured such a right, the Nashville road transports a car to Nashville destined to an industry located upon the tracks of the Louisville Company. Instead of delivering this car to the latter company to be switched by it to such industry, it takes its own engine and crew and, by virtue of its rights under the contract, passes over the tracks of the Louisville Company and delivers the car to the industry located

upon such tracks. It has paid to the Louisville Company the rental for the trackage rights. It has also paid the entire cost incident to the service. There has been no switching charge paid by the Nashville Company to the Louisville Company.

Suppose we now go one step further, and that the Louisville Company in turn secures from the Nashville Company a similar right to enter upon the latter's tracks with its own switch engines and crews for the purpose of making deliveries to industries located upon such tracks. It then performs such switching service at its expense, and there is no switching charge.

If this system of deliveries were in effect at this time, no one would scarcely contend that there was any reciprocal switching arrangement in the sense that such term is used, but that each of these roads had trackage rights over the other and made its own deliveries.

Suppose now that instead of each paying to the other an annual rental, that it be ascertained that each has about the same number of tracks, the same mileage of tracks, and handles approximately the same number of cars during the year. They enter into a new arrangement by which the rental is eliminated, and each in consideration of the trackage rights it gets from the other extends to the other trackage rights over its own tracks.

We would then have a system where there is no reciprocal switching arrangement, for each road handles its own ears to and from the industries located on the other with its own crews and with its own engines, and neither pays to the other a switching charge.

One step further: As each of these roads brings its trains into the same central train yard, it appears to both that it would be a matter of economy to handle the business of each through a joint agent instead of through separate agents. Such a plan would simplify the matter of rules and regulations and of opera-

tion. It would tend to economy. Each would perform this service which it had been performing with its own switching crews and engines in a more satisfactory and economical way through the joint agent.

Has the substance of the plan changed by the employment of the joint agent?

We say not. The substance is still there. The only change that has intervened is one of more economical and satisfactory service. This more satisfactory and economical service has been attained through the employment of the joint agent, which not only operates but maintains all the switch tracks or terminals.

The expense incurred by this joint agent is divided between the two roads according to the use which each makes of the tracks and the switch engines and crews.

We respectfully submit that this is not a reciprocal switching arrangement. Each handles its own freight. Each pays for the handling of its own freight. There is no switching charge paid by either to the other. There is no switching charge imposed upon the shipper or the consignee. There are no switching charges filed with the Interstate Commerce Commission.

It is submitted that the plan of operation at Nashville, as it appears in this record, is not essentially different from what would be the plan of operation if all the tracks embraced in the Nashville Terminals were jointly owned by the two roads. If they were so owned, each would have the right to pass over all the tracks embraced in the Nashville Terminals, with its own engines and crews, and deliver cars to the industries located on such tracks. The fact that under such circumstances a joint agent to perform all of such service should be employed would not in any wise tend to open the terminals to either of the railroads in question, because each of them owns the terminals and has the right to transport its cars thereon.

Nor is the plan appearing in this record essentially different from a plan where each of the two roads has granted to the other trackage rights over its separately owned tracks for the purpose of making deliveries. If such trackage rights had been exchanged, and the crews and engines of each under such contract had passed over the tracks of the other, it could not be said that there was any reciprocal switching arrangement or interchange of traffic between them. If, for economical purposes, these two roads choose to select a joint agent to perform these services, it could not follow that by the selection of such joint agent that the plan had developed into a reciprocal switching arrangement.

Economical operation through joint service should not be made the basis of holding that the plan constitutes a reciprocal switching arrangement, or should not be made the basis of a condition that one road is interchanging traffic with the other.

Let us now consider contracts of the nature of the one under consideration, in connection with section 3 of the Act to Regulate Commerce.

The leading case on this subject is that of Kentucky & Indiana Bridge Co. v. Louisville & Nashville Railroad Co., 37 Fed., 567, the opinion being delivered by Judge Jackson, afterwards Mr. Justice Jackson of the Supreme Court. In speaking of this limitation upon the Commission in section 3 of the Act to Regulate Commerce, he says:

"Now, under this last limitation upon, or qualification of, the duty of affording all reasonable, proper, and equal facilities for the interchange, or for the receiving, forwarding, and delivering of traffic to and from and between connecting lines, it is clearly left open to any common carrier to contract or enter into arrangements for the use of its tracks and terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving an

undue or unreasonable preference or advantage to such lines, or of discriminating against other carriers who are not parties to, or included in, such arrangements. No common carrier can therefore justly complain of another that it is not allowed the use of that other's tracks and terminal facilities, upon the same or like terms and conditions which, under private contract or agreement, are conceded to other lines." (P. 628.)

In the case of Oregon Short Line Railroad v. Northern Pacific Railroad Co., 51 Fed., 465, Mr. Justice Fields referred to the above case with approval in the following language:

"The provision in the second subdivision of the third section of the interstate commerce act, that a common carrier shall not be required to give the use of its tracks and terminal facilities to another carrier engaged in like business, is a limitation upon or qualification of the duty declared of affording all reasonable, proper, and equal facilities for the interchange of traffic and the receiving, forwarding, and delivering of passengers and property to and from the several lines and those connecting therewith. It was so expressly held in the case above cited of Kentucky & I. Bridge Co. v. Louisville & Nashville R. R. Co., 37 Fed. Rep., 571."

Proceeding, the learned Judge said:

"It follows from this, as it was decided in that case, that a common carrier is left free to enter into arrangements for the use of its tracks or terminal facilities with one or more connecting lines, without subjecting itself to the charge of giving undue or unreasonable preferences or advantages to such lines, or of unlawfully discriminating against other carriers. In making arrangements for such use by other companies, a common carrier will be governed by considerations of what is best for its own interests. The act does not purport to divest the railway carrier of its

exclusive right to control its own affairs, except in the specific particulars indicated." (Pp. 474-5.)

Again in the case of Little Rock, Etc., Railroad Co. v. St. Louis, Iron Mountain & Southern Ry. Co., 59 Fed., 400, the Court referred to both of the above cases, and stated that it followed from them that "no common carrier can justly complain of another because it is not allowed the use of the tracks and terminal facilities of such other railway company in the same manner and to the same extent another is." (P. 404.)

Again, in the case of Little Rock, Etc., Railroad Co. v. St. Louis Southwestern Ry. Co., 63 Fed., 775, decided by the Circuit Court of Appeals, Eighth Circuit, the opinion being delivered by Circuit Judge Thayer, the Court said:

"The inhibitions of the third section of the law, against giving preferences or advantages, are aimed at those which are 'undue or unreasonable,' and even that clause which requires carriers 'to afford all reasonable, proper, and equal facilities for the interchange of traffic' does not require that such 'equal facilities' shall be afforded under dissimilar circumstances and conditions. Moreover, the direction 'to afford equal facilities for an interchange of traffic' is controlled and limited by the proviso that this clause 'shall not be construed as requiring a carrier to give the use of its tracks or terminal facilities to another carrier.' Kentucky & I. Bridge Co. v. Louisville & N. R. R. Co., 37 Fed., 571; Oregon Short Line & U. N. Co. v. Northern Pac. R. R. Co., 51 Fed., 465, 473." (P. 778.)

It has been suggested that amendments to the Act to Regulate Commerce have made these decisions no longer controlling as to the interpretation of the proviso in section 3.

The amendment specifically referred to is that one to the 15th section of the Act, authorizing the Commission to establish through routes and fix joint rates, and make divisions thereof between connecting carriers. The effect of this amendment is within such limits that it does not in any way involve any unjust discrimination as to trackage rights. The authority of the Commission to establish through routes between carriers does not give it any power to require the physical use of the property of one railroad to be turned over to another.

Prior to the amendment as to through routes, both the Commission and the courts have denied relief under certain conditions, which would now under the amendments be granted. Thus, where a carrier made a through routing or traffic agreement with one line it was not unjust discrimination to decline a similar arrangement with a third line. One of the reasons that has been given for the denial of such relief, is that the Act had not authorized the Commission or the courts to establish through routes or to prescribe through rates. Such authority has now been given the Commission, and therefore, the proviso of section 3 is now modified to the extent that it does not prohibit the Commission from concluding that there is unjust discrimination in such case, and from entering an order removing the discrimination.

It seems, however, to be well understood that the amendment to the Interstate Commerce Act does not prevent a railroad company from giving trackage rights to one road and denying it to another. Thus, in the recent case of the *Pennsylvania Co.* v. *United States*, 236 U. S., 279, this Court, speaking through Mr. Justice Day, says:

"In the present case we think there is no requirement in the order of the Commission amounting to a compulsory taking of the use of the terminals of the Pennsylvania Company by another road, within the inhibition of this clause of section 3. The order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania Company or to use or occupy its stations or depots for purposes of its own. There is no requirement that the Rochester Company be permitted to store its cars in the yards of the Pennsylvania Company or to make use of its freight houses or other facilities; but simply that the Pennsylvania Company receive and transport the cars of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania Railroad at the same point." (P. 368.)

Again, the Supreme Court says:

"So in the present case, all that the order requires the Pennsylvania Company to do is to receive and transport over its terminals by its own motive power, for the Rochester Company, as it does for other companies, similarly situated, carload freight in the course of interstate transportation." (P. 369.)

The concluding statement of the opinion was:

"So here there is no attempt to appropriate the terminals of the Pennsylvania Railroad to the use of the Rochester Company. What is here accomplished is only that the same transportation facilities which are afforded to the shipments brought to the point of connection over tracks used in common by the Baltimore & Ohio Railroad and the Rochester Company, shall be rendered to the Rochester Company as are given to the Baltimore & Ohio Company under precisely the same circumstances of connection for the transportation of interstate traffic. All that the Commission ordered was that the company desist from the discriminatory practice here involved, and in so doing we think it exceeded neither its statutory authority nor any constitutional limitation, and that the District Court was right in so determining." (P. 371.)

It will also be noted in the dissenting opinion of Mr. Chief Justice White, it is said:

"The Court now holds that this controversy involves merely a switching privilege and the duty of one railroad not to refuse such privilege to another, or at all events if it permits it to one, to allow it to other roads on terms of equality. By a necessary inference, therefore, the decision now made is concerned alone with that subject and does not in any degree whatever as a matter of law involve the right of one railroad company to compel another to permit it to share in its terminal facilities." (P. 372.)

The above authorities are collated and referred to in order to establish the proposition that if the arrangement at Nashville is a legal one, not prohibited by any of the provisions of the Act to Regulate Commerce, then there is no unjust discrimination in the sense of section 3 of the Act. Both the Commission and the courts being powerless to compel a third party to participate in the arrangement or to compel those participating to admit a third party to the arrangement on the same terms, there can be no basis under the Act to Regulate Commerce for the conclusion that there is unjust discrimination, and the Commission is not warranted in issuing an order requiring these companies to cease this legal practice.

If the position taken be correct, that is, that the plan of operation at Nashville does not constitute a reciprocal switching arrangement or does not bring about an interchange of traffic between the two roads, but is essentially the same as if both companies owned the entire terminal district, or is essentially the same as if the companies had exchanged trackage rights with each other, then the above cases support the proposition that the plan is legal and in no way contrary to the provisions of the Act to Regulate Commerce. One railroad company, as has been

seen, can extend rights to another railroad company to operate over its tracks, and yet exclude other companies from operating over the same tracks. There is no authority to compel a railroad extending such trackage rights to one road to extend trackage rights to another. This brings us to a consideration of the question as to how the order of the Interstate Commerce Commission can be complied with, without permitting the Tennessee Central Railroad to participate in the arrangement of the Nashville Terminals.

D.—How Can Appellants Comply with the Order of the Interstate Commerce Commission?

The order of the Interstate Commerce Commission requires the appellants to abstain from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville upon the same terms as interstate non-competitive traffic, while interchanging both kinds of traffic on the same terms with each other. This portion of the order could be readily complied with by declining to switch non-competitive traffic, except for the fact that the Commission orders that both competitive and non-competitive traffic must be switched for the Tennessee Central Railroad Company so long as the two roads interchange both kinds of traffic with each other. If we are correct in the proposition that appellants are not interchanging traffic with each other, of course this order falls to the ground as being illegal and void.

But the real difficulty in complying with the order of the Commission is as to that part of the order providing that appellants shall file and post, as prescribed by section 6 of the Act to Regulate Commerce and to maintain and apply to the switching of interstate traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, "rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city, as said relation is found by the Commission in its said report to be non-discriminatory."

Compliance with this order of the Commission involves one or another of the following schemes:

- (a) To switch for the Tennessee Central at the same cost per car as that which it contemporaneously costs each of the two companies per car for switching its own cars in the Nashville terminals, or
- (b) To permit or compel the Tennessee Central to enter into the common or joint arrangement; or
- (c) To set up between the two companies a fictitious or paper switching charge, and then charge the Tennessee Central the same per car; or
- (d) To destroy the organization known as the Nashville Terminals, so that each will only use its own tracks, and each will maintain and operate separate switching crews and engines, and both will establish interchange tracks and a uniform switching charge; and then impose such uniform switching charge upon the Tennessee Central for services that each performs for it.

It is believed that the invalidity of the order will appear from the impossibility of complying with it without destroying the arrangement between the two companies at Nashville.

If either of appellants be required to switch for the Tennessee Central at the same cost per car as that which it now costs each company to switch its own cars in the Nashville Terminals, it will be compelled to perform a service for the Tennessee Central certainly without any profit and probably at a loss, for it appears in the record that switching by either road for the Tennessee Central will cost more per car than switching for itself. Furthermore, the cost to either of appellants to switch its own cars varies from day to day and from month to month, and it would be impossible to switch for the Tennessee Central on such a varying basis of cost.

Another method of complying with the order would be to permit or compel the Tennessee Central to enter into the common or joint arrangement. As we understand, the Tennessee Central cannot be compelled to enter into the joint arrangement for the operation at the Nashville Terminals, nor can appellants be compelled to permit the Tennessee Central to enter such an arrangement. The authorities already cited we think sustain this proposition.

Another method of complying with the order would be that the appellants might set up, as between themselves, a fictitious switching charge, that is to say, file with the Interstate Commerce Commission tariffs showing that the joint agent would charge each of the companies so much per car for switching, and then charge the Tennessee Central the same rate per car. Manifestly this would be a mere fiction, for each of appellants under the plan of operation pays the expenses of switching its own cars, and for either appellant to pay the joint agent a switching charge and then put it back in its own pocket would be an arrangement on paper and not in fact. It is submitted that a compliance with the provisions of the Act to Regulate Commerce does not contemplate a fiction of this character.

The only logical method of complying with the order of the Interstate Commerce Commission is to destroy the organization known as the Nashville Terminals, so each of appellants will only use its own tracks; each will maintain and operate separate switching crews and engines; each then could decline to switch for the other, and thereby comply with the order of the Com-

mission, or each could switch for the other and also switch for the Tennessee Central on the same basis. If, however, the arrangement between appellants at Nashville is a legal one, no order of the Interstate Commerce Commission, a compliance with which requires this arrangement to cease, can be valid or lawful.

E.—The Circumstances Surrounding the Tennessee Central Company are Entirely Dissimilar to Those Existing Between Appellants.

The relative location and circumstances existing between appellants' roads are entirely different from and dissimilar to, the relations of each with the Tennessee Central Company.

The Central Company has no connection with the central train yards. It pays no rental therefor. It has endorsed no bonds of the Terminal Company.

The Central Company connects with the Nashville Company two miles west of these central yards, and with the Louisville Company several miles south of these yards.

There is no arrangement between the Central Company and either of the other companies by which they hire jointly switch engines or employ jointly switching crews.

Let us further analyze the dissimilarity of conditions by taking the conditions between the Nashville and the Louisville Company, and the Nashville Company and the Central Company.

A car of freight comes in over the Louisville Company's line into the central yards destined to an industry upon the tracks of the Nashville Company. The Nashville Company does not take its switch engine and switch this car to its destination. The Nashville Company does not pay the expense of switching this car to its destination. On the other hand, a joint switching crew

with a joint engine carries this car to the industry located on the Nashville Company's track, and the Louisville Company at the end of the month pays for the cost of switching it:

On the other hand, a car comes in over the Central Company to be delivered upon the Nashville Company's tracks. It can only be put upon the rails of the Nashville Company two miles west of these train yards. Therefore, if the Nashville Company is compelled to deliver it to its destination, a switching crew must go to this point and get the car and transfer it to the industry located upon its own track at its own expense.

There is no method by which the Central Company can pay for the cost of performing this operation. The order of the Commission assumes that there would be a uniform charge for this service, regardless as to whether this car is destined to an industry a few hundred yards from the point of delivery or several miles from the point of delivery.

The same dissimilar conditions would exist in delivering a car from an industry located upon the Nashville Company to the Louisville Company and to the Central Company.

Such a car for the Louisville Company would be delivered by the joint crew to the central train yards and the Louisville Company would pay for the expense of moving it.

In the case of the Central Company the car would have to be moved two miles west of the train yards in order to reach the Central Company's tracks, and the expense of moving it would not be paid by the Central Company, except through a charge which would not be commensurate with the expense of the movement. The actual expense of movement must be borne by the Nashville Company, or by the joint agent.

The dissimilarity of conditions is even more striking in the case of the attempted interchange between the Louisville Company and the Central Company. The Central Company has no

connection with the Louisville Company except at Vine Hill, several miles south of Nashville, and beyond the corporate limits of the city. In order for the Louisville Company to interchange and switch cars for the Central Company from Vine Hill, it would be compelled to send a switch engine out upon the road several miles, or to pick up cars with its regular freight trains coming into Nashville. In order for the Louisville Company to deliver cars to the Central Company at Vine Hill, it would either be compelled to run a switch engine out to that point, or to carry these cars to Vine Hill in its regular freight trains and switch them out at that point.

It may be said, however, that the Louisville Company could deliver such cars to the Central Company at Shops Junction on the tracks of the Nashville Company. Still, this would make the conditions and circumstances entirely dissimilar to those existing between the Nashville Company and the Louisville Company.

Our conclusion upon this subject is that the finding of the Commission that the conditions and circumstances were substantially the same, is wholly unwarranted and unsupported by the evidence and is against the substantial character of all of the evidence. Any order based upon such an unwarranted conclusion of fact, must be necessarily illegal and void.

In conclusion it is urgently insisted that the order of the Interstate Commerce Commission is based upon a fiction, and that fiction is that appellants have at Nashville a reciprocal switching arrangement, or that appellants interchange traffic at Nashville. As has already been stated no tariff has ever been filed showing the switching charges between appellants' roads. Each pays the expense of its own switching, each does its own switching through its own agent, notwithstanding the fact that such agent is also the agent of the other. The arrangement be-

tween appellants at Nashville is essentially the same as if they owned jointly the entire terminal district at Nashville and performed the switching there through a joint agent.

Respectfully submitted,

CLAUDE WALLER,
Solicitor for Nashville, Chattanooga
& St. Louis Railway.

R. Walton Moore, Frank W. Gwathmey, Of Counsel.



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

LOUISVILLE & NASHVILLE RAILROAD COMpany, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company, appellants,

THE UNITED STATES OF AMERICA, INTERstate Commerce Commission, City of Nashville, Traffic Bureau of Nashville, and Tennessee Central Railroad Company, appellees.

No. 290.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NASHVILLE DIVISION OF THE MIDDLE DISTRICT OF TENNESSEE.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Appellants instituted this suit in the District Court of the United States for the Middle District of Tennessee to enjoin the enforcement of an order 63783-16

of the Interstate Commerce Commission requiring them to discontinue practices which discriminated against the Tennesse Central Railroad Company in the interchange of competitive traffic at Nashville, Tennessee, in violation of section 3 of the Act to Regulate Commerce (24 Stat. 379, 380). Upon the hearing, a motion for an interlocutory injunction was denied and the petition dismissed. (Rec. Vol. I, p. 59, 227 Fed. 258.) An appeal was taken and, upon being docketed in this court, motion made for an order maintaining the status quo pending the appeal. This motion was denied on November 29, 1915.

STATEMENT OF FACTS.

Nashville, Tennessee, is served by three railroads, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, and the Tennessee Central Railroad. Though the Louisville & Nashville owns 71 per cent of the stock of the Nashville, Chattanooga & St. Louis Railway, they are natural competitors for Nashville traffic, and each competes with the Tennessee Central. (Rec. Vol. II, 572, 575.)

The Louisville & Nashville Terminal Company was organized in 1893, and the Louisville & Nashville became the owner of its entire capital stock. All of the facilities which were owned by the Terminal Company were leased by it to the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in 1896.

Prior to 1900 the Louisville & Nashville and the Nashville, Chattanooga & St. Louis railroads operated separate terminals under reciprocal switching arrangements, by which each switched cars for the other to and from their local destinations at a uniform charge of \$2 per car (Rec. Vol. II, p. 390), which charge was absorbed on competitive traffic. (Rec. Vol. II, p. 575.)

In 1900 the two railroads created an unincorporated organization, styled "The Nashville Terminals," for the maintenance and operation of their terminal facilities at Nashville, to be operated as such, under the management of a board of control, consisting of a superintendent of the terminals and the general managers of the two railroads, the expenses to be apportioned between the two roads in proportion to the number of cars and locomotives handled for each company. (Rec. Vol. II, p. 378 et seq.)

The long-anticipated entrance of the Tennessee Central into Nashville became a fact in 1902, despite the strenuous opposition of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railroads. (Rec. Vol. II, pp. 298–9.) Prior to 1907 neither of these roads would interchange traffic with the Tennessee Central. In that year "in deference to public opinion" (Rec. Vol. II, p. 151) both roads began to furnish the Tennessee Central with switching service at Nashville on all except coal and competitive business. (Rec. Vol. II, p. 576.) In partial compliance with the order of

the Interstate Commerce Commission, upheld in Louisville & Nashville Railroad Company v. United States (238 U. S. 1), the switching service was extended to noncompetitive coal, but still denied to all competitive traffic.

The Louisville & Nashville and the Nashville, Chattanooga & St. Louis railroads filed terminal tariffs providing that "there is no switching charge to or from locations on tracks of the Nashville terminals, within the switching limits, on freight traffic, carloads, from or destined to Nashville" over either road, "regardless of whether such traffic is from or destined to competitive or noncompetitive points." (Rec. Vol. II, p. 576.)

These two railroads will handle competitive traffic for the Tennessee Central at local rates, but these rates, which vary from \$7 to \$36 per car (Rec. Vol. II, pp. 152, 154), are prohibitive.

Upon application and after hearing, the Commission issued an order requiring the Louisville & Nashville and the Nashville, Chattanooga & St. Louis "to cease and desist, on or before May 1, 1915, and thereafter to abstain, from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company, at Nashville, Tenn., on the same terms as interstate noncompetitive traffic, while interchanging both kinds of said traffic on the same terms with each other, as said practice is found by the Commission in its said report to be unjustly discriminatory." And further

ordered them to put into effect "rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city, as said relation is found by the Commission in its said report to be nondiscriminatory." (Rec. Vol. II, pp. 589–590.) This is the order attacked in this proceeding.

THE STATUTE.

The pertinent part of section 3 of the Act to Regulate Commerce provides:

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business. (24 Stat. 379, 380.)

ARGUMENT.

Appellants preserved in the assignments of error the single contention, that their joint agency contemplates no "interchange of traffic" between them, but that each performs its own switching. In their briefs, however, other contentions are made. (Louisville & Nashville Railroad Company's Brief, p. 34.)

The Government maintains that all the questions raised are foreclosed by the decisions of this court.

The questions presented in this case have already been determined by this court.

No extended argument of this case is proper, because this court has already, we submit, not only (a) settled the principles involved (*Pennsylvania Company* v. *United States*, 236 U. S., 351), but has also (b) applied those principles to the facts presented by this record. (*Louisville & Nashville Railroad Company* v. *United States*, 238 U. S., 1.)

(a) In the former case, it is again announced, with citation of numerous cases, that discrimination is a question of fact for the determination of the Commission (p. 361); that transportation similar to that involved in this case comes within section 3 of the act to regulate commerce as amended (pp. 363–364); that to require such interchange is not a taking of property without due process of law (p. 369), and does not require the carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business (pp. 366, 369).

It follows that the provisions of section 3 of the act must be read in connection with the amendments and subsequent provisions, which show that transportation as used in the act covers the entire carriage and serv-

ices in connection with the receipt and delivery of property transported. There can be no question that when the Pennsylvania Railroad used these terminal facilities in connection with the receipt and delivery of carload freight transported in interstate traffic it was subject to the provisions of the act, and it was obliged as a common carrier in that capacity to afford all reasonable, proper, and equal facilities for the interchange of traffic with connecting lines and for the receiving, forwarding, and delivering of property to and from its own lines and such connecting lines, and was obliged not to discriminate in rates and charges between such connecting lines. By the amendments to the act, the facilities for delivering freight of a terminal character are brought within the terms of the transportation to be regulated. (Pennsylvania Company v. United States, 236 U.S., 351, 363.) [Italics ours.]

(b) In the case of the Louisville & Nashville Railroad Company v. United States (238 U. S., 1), the record and the issues before the court were substantially the same as presented in this case, and the judgment there is decisive here. It is true that in the former case only the reports of the Commission were before this court, while the record now contains both the reports of the Commission and the evidence taken before it. Nevertheless, the evidence before the Commission and its findings of fact were substantially the same in both cases.

Now, as then, appellants argue to uphold their device of a "joint agency" as a technical means to avoid furnishing "facilities for the interchange of traffic" to the Tennessee Central. That the issue and the argument are the same clearly appears from a comparison of the following excerpts from their briefs in the two cases.

On page 34 of the brief of the Louisville & Nashville in the instant case, the proposition is thus stated:

Each plaintiff pays for and through the joint agency performs the service incident to switching its cars between the point of interchange and the industry in the case of every car which is hauled inbound or outbound over its tracks. Accordingly, neither switches for the other nor discriminates against the Tennessee Central in refusing to switch for it.

In their briefs in the former case (Louisville & Nashville Railroad Company v. United States, 238 U. S. 1) the corresponding issue was thus expressed:

Inasmuch as the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway do not, therefore, switch for each other, but switch for themselves through the joint terminal arrangement, any idea that there is any discrimination, either just or unjust, in refusing to switch—that is to say, originate or deliver—traffic of the Tennessee Central Railroad is preposterous. (Brief, p. 59.)

Each of these companies is to all intents and purposes the owner and operator for its own account of all of the joint facilities involved. (Second Reply Brief, p. 36.)

Not only was the issue now advanced made and insisted upon by appellants in the former case, but, as will be seen from an examination of the record, was given careful consideration by the Commission, the District Court, and this court.

The respective interests of appellants in the terminal property, the joint agency and its method of operation were described in detail in both the report of the Commission and the decision of the District Court. After consideration of these facts, the District Court reached the following conclusion:

After careful consideration of the evidential facts set forth in the report of the Commission in reference to the switching practice of the petitioners at Nashville, without determining the weight given to such facts, when separately considered, we are of opinion that such facts, when considered as a whole, afford substantial evidence supporting the conclusion of the Commission that such switching practice, which in effect prohibited the interswitching of coal to and from the tracks of the Tennessee Central Railroad. was unreasonably and unjustly discrimi-* * *. (Louisville & Nashville natory. Railroad Company v. United States, 216 Fed. 672, 683.)

This court adopted the statements of facts of the Commission and the District Court, using same as the basis of its decision.

The facts involved have been so fully stated by the Commission (28 I. C. C. 533) and by the court below (216 Fed. Rep. 672) that it is unnecessary here to repeat them. (Louisville & Nashville Railroad Company v. United States, 238 U. S. 1, 10.)

With these facts before it, this court looked beyond the mere form of the arrangement to the substance, and held:

> In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business. As long as the yard remained open and was used as a facility for switching purposes the Commission had the power to pass an order not only prohibiting discrimination—but requiring the appellants to furnish equal facilities "to all persons and corporations without undue preference to any particular class of persons." (Louisville & Nashville Railroad Company v. United States, 238 U. S., 1, 20.)

In the instant case, the District Court and the Commission have likewise disregarded form for substance.

And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely concur in the conclusion of the Commission that such joint switching operation "is essentially the same as a reciprocal switching arrangement," constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of section 3 of the Interstate Commerce Act. each railroad does not separately switch for the other, but that such switching operations are carried on jointly, is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done, rather than in the particular device employed or the names applied to those engaged in it. See, by analogy, United States v. Chicago Railroad, 237 U. S., 410, 413, 35 Sup. Ct., 634, 59 L. Ed., 1023. (Louisville & Nashville Railroad Company v. United States, 227 Fed., 258, 269.)

Appellants claim that the decision in the case of Louisville & Nashville Railroad Company v. United States (238 U. S. 1) does not foreclose the questions raised in this case "for the reason that the

case there decided was entirely different from the one here presented." They cite but a single finding of the Commission to support this broad statement. This finding had reference to the independent operation of certain individually owned tracks. They point, however, to no specific evidence in the record to show that it is incorrect, but rely upon mere assertion. We submit that it is supported by the record. (Rec. Vol. II, pp. 319, 424, 434.)

Be this as it may, the point is immaterial, since the conclusions of the Commission, the District Court, and this court were based, not upon such incidental fact, but upon the broad proposition and main contention that it was discriminatory to refuse to interchange competitive traffic with the Tennessee Central while at the same time, through their joint agency, "furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business." (Louisville & Nashville Railroad Company v. United States, 238 U. S. 1, 20.)

Having made the yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of section 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. The carriers can not say that the yard is a facility open for the switching of cotton and wheat and lumber, but can not be used as a facility for the switching of coal. Whatever may have been the rights of the carriers

in the first instance; whatever may be the case if the yard was put back under the protection of the proviso to section 3, the appellants can not open the yard for most switching purposes and then debar a particular shipper from a privilege granted the great mass of the public. In substance that would be to discriminate not only against the tendering railroad, but also against the commodity which is excluded from a service performed for others. (Louisville & Nashville Railroad Company v. United States, 238 U. S. 1, 19.)

CONCLUSION.

The decree of the District Court should be affirmed.

Respectfully submitted.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

OCTOBER, 1916.

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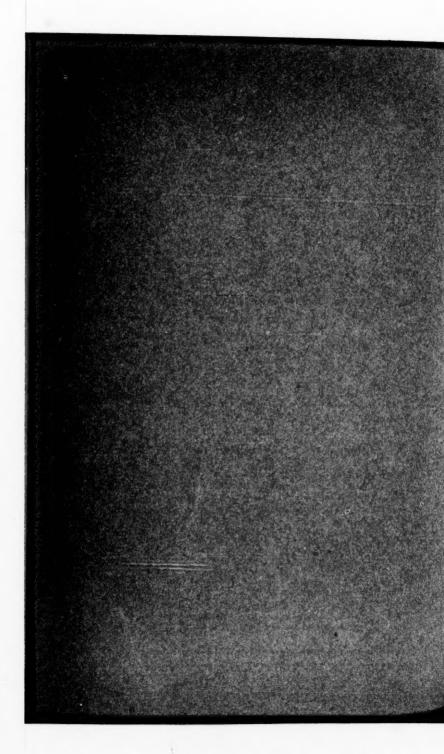
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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

LOUISVILLE & NASHVILLE RAILBOAD COMPANY et al., appellants,

No. 290.

UNITED STATES OF AMERICA ET AL., APPELLEES.

BRIEF FOR THE INTERSTATE COMMERCE COM-MISSION.

STATEMENT OF THE CASE.

This is an appeal from a decree of the United States District Court for the Middle District of Tennessee, denying a motion and dismissing a petition for an interlocutory injunction against an order of the Interstate Commerce Commission, concerning switching practices at Nashville, Tenn.

The order in question was entered by the Commission on February 1, 1915, in City of Nashville et al. v. Louisville & N. R. Co. et al., docket No. 6484, 33 I. C. C. 76. That order, inter alia, required the Louisville & Nashville Railroad Company, hereinafter called the Louisville Company, the Nashville, Chattanooga & St. Louis Railway, hereinafter

called the Nashville Company, and the Louisville & Nashville Terminal Company, hereinafter called the Terminal Company, to cease and desist—

* * * from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company [hereinafter called the Tennessee Central] at Nashville, Tenn., on the same terms as interstate noncompetitive traffic, while interchanging both kinds of said traffic on the same terms with each other, as said practice is found by the Commission in its said report to be unjustly discriminatory. [Italics ours.]

The facts upon which the order in controversy was based were developed in a full hearing before the Commission, at which elaborate and comprehensive exhibits were offered and many witnesses were heard. The report of the Commission is found in the Record, Volume II, pages 571–588. A statement of the facts is also found in the opinion of the District Court, Record, Volume I, pages 59–69. Counsel for the appellants have adopted this statement of facts by the court, and printed it in full in their brief. As the statement is full and substantially correct, we shall call attention only to a few significant facts found in the record.

(a) Prior to August 15, 1900, the Louisville Company and the Nashville Company severally owned and operated their own terminals at Nashville and each company switched over its terminal tracks cars for the other company at the published rate of \$2 per car, Record, Volume II, page 390, without any distinction, or difference in charge, between competitive and noncompetitive traffic.

(b) After the completion of the present terminals at Nashville, secured in the manner set forth in the statement of facts referred to, the appellants continued the operation of the terminalspart now owned separately and part owned jointly—by a joint arrangement provided for in the contract of August 15, 1900, Record, Volume II. page 378. This contract provides, inter alia, for the care and control of the union station, and of a designated territory called the terminals, by a superintendent chosen by the appellants acting with the respective general managers of each company. These three officers are designated a "board of control" and, for convenient reference and for the keeping of the accounts of the constituent members, the property is known as "Nashville Terminals." The equipment, engines, etc., and the employees required for the terminal operation are all furnished by the appellants, as they were before the contract was made. Mr. Keeble, one of the counsel for the Louisville Company, who was a witness for the appellants before the Commission, gave this summary statement concerning this arrangement, in answer to a question by Mr. Jouett, Record, Vol. II, p. 289:

Mr. JOUETT. What do you understand is meant by the term "Nashville Terminal

Company"? Is that a corporation or partnership, or anything more than a mere joint organization?

Mr. Keeble. That was nothing more nor less than a name used to designate the terminal limits of this joint operation. That is not the name of a corporation; it is a mere designation of the territory covered by this mutual arrangement, and has been so decided by our courts, by many decisions, that the two railroads are jointly responsible for everything that happens there. An employee of the Nashville Terminal Company is not an employee of the terminal company, but an employee of the two railroads, * * *

The Commission made the following findings of fact:

(a) The Louisville & Nashville will switch competitive coal and other competitive traffic to and from the Tennessee Central, but only at the local rates between Nashville and Overton, Tenn., which are the rates between Nashville and Vine Hill, by intermediate application. The interchange is usually effected, however, at Shops Junction, and over the rails of the Nashville, Chattanooga & St. Louis. Record, Vol. II, p. 577.

(b) The terminal tariffs of both roads publish service by the Nashville Terminals and provide that "there is no switching charge to or from locations on tracks of the Nashville Terminals, within the switching limits, on freight traffic, carloads, from or destined to Nashville" over either road,

"regardless of whether such traffic is from or destined to competitive or noncompetitive points." [Italies ours.] Record, Vol. II, p. 576.

(c) During 1907, both roads began to interchange with the Tennessee Central all noncompetitive traffic, except coal traffic, at a charge of \$3 per car. Noncompetitive traffic is defined as traffic between Nashville and points served by only one railroad into Nashville, or points served by two or more railroads into Nashville for which, however, one road can maintain rates which the others can not meet. The interchange is effected at Shops Junction. Record, Vol. II, p. 576.

(d) The rates applied to this switching [competitive traffic from and to Tennessee Central] by the Louisville & Nashville total from \$12 to \$36 per car; the Nashville, Chattanooga & St. Louis rates from \$7 to \$36 per car; * * * * Record, Vol. II, p. 577.

(e) The cost to the Nashville Terminals of switching competitive Tennessee Central traffic is the same as the cost of switching noncompetitive traffic. Record, Vol. II, p. 579.

(f) We do not find that the conditions of interchange of traffic between defendants' lines and the Tennessee Central differ substantially from the conditions of interchange between defendants' lines. Record, Vol. II, p. 582.

(g) The Louisville & Nashville interswitches competitive and noncompetitive 34181-16—2 traffic on the same terms with other carriers at several other points, notably Memphis, Tenn., and Birmingham, Ala.; while the Nashville, Chattanooga & St. Louis admittedly interswitches both kinds of traffic at the same rates with all connections at all points of connection with other carriers, except Nashville and Lebanon, Tenn., where it connects with the Tennessee Central. Record, Vol. II, pp. 584–585.

(h) * * * there are approximately 240 industries located exclusively on their [appellants'] rails, equipped with sidings that will accommodate approximately 2,350 cars, as compared with 100 industries equipped with sidings accommodating not over 700 cars, located exclusively on the rails of the Tennessee Central, * * * Record, Vol. II, p. 583.

(i) The virtually prohibitive charges imposed by defendants for switching competitive Tennessee Central traffic at Nashville cause Nashville shippers little direct pecuniary loss. Industries located on any of the three lines can avoid the switching charges imposed by the others by shipping over the line on which they are located. They are subject, however, to all the disadvantages of service by a single railroad. Shipments are frequently misrouted. If the railroads are shown to be at fault, delivery is made by drays at the railroad's expense, but only after the consignee has prepaid all charges, including drayage charges, and provided the

consignee has notified the railroad of the error in routing before accepting the ship-Delivery is delayed, and frequently goods are damaged by dravage. Lumber merchants located on defendants' lines can not profitably take advantage of the millingin-transit service accorded at Nashville by the Tennessee Central. Shipments may be delayed because of a car shortage on one line, although another line has a surplus of cars. Industries located on one line lose customers at other points who prefer shipment over the other lines. These disadvantages to shippers affect Nashville as a city and hinder its growth as an industrial center. [Italies ours.] Record, Vol. II, pp. 586-587.

(j) The only use of defendants' "tracks or terminal facilities" asked by complainants for the Tennessee Central is the use incidental to the movement of Tennessee Central cars by defendants to and from industries on defendants' tracks. No use by Tennessee Central trains is asked, nor any use of defendants' freight depots or team or storage tracks. [Italies ours.] Record, Vol. II, p. 585.

The Commission concluded:

Under all of the circumstances disclosed we are of the opinion and find that defendants' refusal to switch competitive traffic to and from the Tennessee Central at Nashville on the same terms as noncompetitive traffic, while interchanging both kinds of traffic on

the same terms with each other, is unjustly discriminatory, * * *. [Italics ours.] Record, Vol. II, p. 587.

QUESTION INVOLVED.

Counsel for appellants, in their brief, pp. 1-2, say: "Only a single question is involved and that is one of law." This they limit to the question whether the joint ownership and operation of the terminals constitutes a "switching for each other" "which requires them to switch for a third." On page 24 of the same brief, under the heading "Switching Competitive Traffic," counsel say:

This is what the Commission orders the appellants to do for the Tennessee Central (Vol. II, p. 589) and it is this, that they are here resisting, whether or not they should switch this traffic, being the sole question in the case. [Italics ours.]

This is not strictly correct. The question is whether appellants may refuse to switch competitive traffic to and from the Tennessee Central on the same terms as noncompetitive traffic while interchanging both kinds of traffic on the same terms with each other. As stated by counsel for appellants, brief, p. 53: "This is a discriminating case, that being the sole ground of the Commission's order." And the discrimination condemned is "the refusal to switch competitive traffic * * * on the same terms as noncompetitive traffic," while

switching both kinds of traffic on the same terms with each other.

As no complaint is made as to the procedure before the Commission, or that there was not a full hearing, and as no question is raised as to the essential facts supporting the order, the sole question, as we regard it, is: Did the Commission have power to make the order in question? Section 3 of the act provides:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular * * * locality, or any particular description of traffic in any respect whatsoever, or to subject any particular * * * locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [Italics ours.]

Every [such] common carrier * * * shall, according to their respective powers, afford * * equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of * * * property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

ARGUMENT.

I.

THE COMMISSION'S FINDINGS OF FACT, IF BASED UPON SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE.

The question of unjust discrimination, as presented in this case, is one of fact, even though the evidence may be undisputed. *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314; *Pennsylvania Co.* v. *United States*, 236 U. S. 351.

Section 15 of the act, as amended, empowers the Commission to deal with preferential and discriminatory regulations of carriers, as well as with rates. *Int. Com. Com.* v. *Illinois Central R. Co.*, 215 U. S. 452.

Courts will not substitute their own conclusions of fact for those of the Commission, when there is substantial evidence before the Commission tending to support its findings. Int. Com. Com. v. Delaware, L. & W. R. Co., 220 U. S. 235; Atchison, T. & S. F. Ry. Co. v. United States, 232 U. S. 199; United States v. Louisville & N. R. Co., 235 U. S. 314.

II.

THE FINDING OF THE COMMISSION THAT THE LOUIS-VILLE COMPANY AND THE NASHVILLE COMPANY WERE IN EFFECT SWITCHING FOR EACH OTHER WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The third vice president of the Louisville Company, in a letter to the commissioner of the traffic bureau of Nashville, Complainants' Exhibit No. 8, Record, Vol. II, p. 165, referred to the relations

between the Louisville Company and the Nashville Company as follows:

You, of course, are aware that the greater portion of the terminals of the N. C. & St. L. Ry. and of the L. & N. R. R. are either jointly owned or are pooled; that the individual facilities of each of the two lines within the Nashville switching limits are approximately equal; and that the whole of the facilities are operated in joint interest. [Italics ours.]

That the situation described as existing between the Louisville Company and the Nashville Company was recognized by those carriers as constituting a reciprocal switching arrangement is evident from the definition of "reciprocal switching arrangements" later given by the third vice president, in the same letter, Record, Vol. II, p. 167, as follows:

Reciprocal switching arrangements between railroads means what the term, on its face, implies; that is, approximately equal service and facilities are to be afforded by each of the two or more interested lines. Reciprocal switching arrangements necessarily must mean that the service performed by each for the other shall, to an approximately equal extent, justify the same. [Italics ours.]

Prior to August 15, 1900, the Louisville Company and the Nashville Company switched for

each other at a charge of \$2 per car. Record, Vol. II, pp. 390, 433. Apparently for no other purpose than "for economy and to expedite the handling of the business," Record, Vol. II, p. 387, the carriers on that date adopted the expedient known as the "Nashville Terminals." Record, Vol. II, p. 378. The switching practice thereafter observed by appellants was described by the superintendent of terminals, Record, Vol. II, p. 386, as follows:

The cars of both roads are handled together by the same switching crews; in other words, whenever we have a run to make the terminal engine and crew picks up all cars that are ready to go in that direction without any distinction being made as to whether it is Nashville, Chattanooga & St. Louis or Louisville & Nashville business.

It is therefore apparent that, while the Louis-ville Company and the Nashville Company, after the inauguration of the joint arrangement, continued as theretofore to perform a switching service for each other, that service, after the establishment of the Nashville Terminals, was rendered by the common agency of both, instead of individually by each for the other, as previously had been done. In other words, the carriers, after the establishment of the terminals, instead of operating with their own respective crews the engines used in interchange, merely supplied those engines, and they were directed or controlled by their common agent.

In this connection the following colloquy between the superintendent of Nashville Terminals and Mr. Baxter, Record, Vol. II, p. 434, is illuminative:

Mr. Baxter. And it does not matter whether it is the Louisville & Nashville engine that takes that car at the station or Nashville, Chattanooga & St. Louis engine that handles it?

Mr. BRUCE. No. sir.

Mr. Baxter. In fact, your Nashville, Chattanooga & St. Louis engines do as much switching in the Louisville & Nashville Railroad yards as do the Louisville & Nashville Railroad yard engines proper, do they not?

Mr. Bruce. I can probably explain that, Mr. Baxter, better by saying that "each road, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, assigns its proportion of the engines needed for yard service to the Nashville Terminals, and we use those engines regardless of whose business they are handling or whose tracks they are working on."

Mr. Baxter. And you use them regardless of location?

Mr. Bruce. Or regardless of location; yes. Mr. Baxter. So a Louisville & Nashville engine will switch in the Nashville, Chattanooga & St. Louis yard on its private tracks, and it will switch on the Louisville & Nashville private tracks, and it will handle a car on the terminal tracks?

Mr. BRUCE. Yes, sir.

Mr. Baxter. And the same is true of the Nashville, Chattanooga & St. Louis Railway?

Mr. BRUCE. Yes, sir.

Appellants contend that the Nashville Terminals acts in every instance as the agent of the carrier performing the line service, and cite, in support of that contention, the practice observed by the Terminals in the apportionment of its operating expenses. But if the joint agency did not exist, the carrier switching the traffic to or from the industry on its line would bill that service against the carrier making the road haul. In other words, the line carrier merely pays its proportion of the switching service performed by the Nashville Terminals instead of the switching charge which it otherwise would pay to the carrier performing that service. The joint agent, then, must be held to act for the carrier which would perform the switching service in the absence of the joint arrangement.

It is apparent, therefore, that the mere intervention of the joint agency in no wise changed the relations theretofore existing between the Louisville Company and the Nashville Company nor the legal effect of the services rendered by those carriers for each other.

In the light of the foregoing evidence, it is submitted as the merest casuistry for appellants to contend that the findings of the Commission, with respect to a reciprocal switching arrangement between the Louisville Company and the Nashville Company, were not supported by the record.

The three judges who decided this case in the District Court found not merely that there was substantial evidence to support the findings of the Commission but expressly approved its finding that appellants switched for each other. In this connection it was said, Record, Vol. I, p. 70:

That each railroad does not separately switch for the other, but that such switching operations are carried on jointly is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act and its remedial purpose defeated by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done rather than in the particular device employed or the names applied to those engaged in it.

III.

THE FINDING OF THE COMMISSION THAT THE LOUIS-VILLE COMPANY AND THE NASHVILLE COMPANY WERE IN EFFECT SWITCHING FOR EACH OTHER WAS SUPPORTED BY THE DECISION OF THIS COURT IN LOUISVILLE & N. R. CO. v. UNITED STATES, 238 U. S. 1.

In Louisville & N. R. Co. v. United States, 238 U. S. 1, the precise questions here involved were heard and determined. This court in that case, speaking through Mr. Justice Lamar, said, page 17:

They claimed that they had the right to the exclusive use of their own terminals and could not be required to switch cars loaded with "coal or competitive freight" to and from the Tennessee Central. [Italics ours.]

And again stating the issues, the court said, page 18:

The appellants attack this order as being void, because (1) it compels them to admit the Tennessee Central into an arrangement for operating joint terminals at Nashville under a contract guaranteeing interest on bonds and prorating operating expenses; (2) takes their property in the yards without due process of law; (3) violates section 15 of the commerce act (34 Stat. 589) in compelling them, in effect, to make through routes and joint rates with the Tennessee Central when the appellants themselves have already established "a reasonable and satisfactory through route"; and (4) violates section 3 of the same act, which, after requiring carriers to afford equal facilities for the interchange of traffic, declares that the section "shall not be construed as requiring any such carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

And then determining these questions, the court continued:

These objections treat the order as being broader than its terms. The commission did not, as in *Waverly Oil Works Co.* v. *Penna. R. R.*, 28 I. C. C. 621, 627, pass upon the question as to what was a proper switching charge as affected by the rental of the

yard and the cost of operation. Neither did it direct the appellants to establish a joint rate and a through route with the Tennessee Central. Neither did it order the appellants to give the use of their terminals to the Tennessee Central, but only required them to render to the latter the same service that each of the appellants furnishes the other in switching cars to industries located in and near the yard.

Disregarding the complication arising out of joint ownership and the fact that each of the appellants switches for the other, it will be seen that the Commission is not dealing with an original proposition but with a condition brought about by the appellants themselves. Under the provisions of the commerce act, 24 Stat. 380, the reciprocal arrangement between the two appellants would not give them a right to discriminate against any person or "particular description of traffic."

Again the court said, page 19:

Having made the yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of section 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. The carriers can not say that the yard is a facility open for the switching of cotton and wheat and lumber, but can not be used as a facility for the switching of coal. * * * In substance that would be to discriminate

not only against the tendering railroad, but also against the commodity which is excluded from a service performed for others.

And on page 20:

The question, as to power of the Commission to make this part of the order, is settled by the decision in *Pennsylvania Company* v. *United States*, 236 U. S., 351, recently decided. * * * But the alleged differences do not serve to take the present case out of the principle announced in that just cited. For in this order the prohibition against the existing practice and the requirement to furnish equal facilities come to the same thing.

In this case the controlling feature of the Commission's order is the prohibition against discrimination. It was based upon the fact that the appellants were at the present time furnishing switching service to each other on all business, and to the Tennessee Central on all except coal and competitive business. As long as the yard remained open and was used as a facility for switching purposes the Commission had the power to pass an order, not only prohibiting discrimination, but requiring the appellants to furnish equal facilities "to all persons and corporations without undue preference to any particular class of persons."

In seeking to revive the issue, appellants urge that all the facts were not before the court.

The material facts of record in the two cases are essentially the same, although more in detail in this record. But so far as the question here involved is concerned the Commission says that it "discloses nothing to change our former conclusion." The responsibility of appellants for the practice in the yards and the discrimination condemned is admitted.

It is therefore submitted that the findings of the Commission here under consideration, and the order founded thereupon, are supported by the decision in the former case, and should be sustained.

IV.

DISCRIMINATION BY THE NASHVILLE TERMINALS, THE JOINT AGENT OF APPELLANTS, IS NO MORE TO BE JUSTIFIED UNDER THE ACT THAN WOULD BE DISCRIMINATION BY EITHER OF ITS PRINCIPALS.

Appellants virtually admit that if they were individually switching for each other, and at the same time and under like conditions refusing to perform a similar service for the Tennessee Central, their discrimination against the latter carrier would constitute a violation of the Act. How, then, can they justify such a discrimination when effected by their common agent?

Again, if the Nashville Terminals were in fact a terminal company, as that expression is generally understood, it could scarcely deny that its exclusion of the Tennessee Central from privileges extended to the Louisville Company and the Nashville Company would constitute an unlawful discrimination. St. Louis, S. & P. R. Co. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 235–236. Yet ap-

pellants, in effect, contend that their terminal company, by metamorphosis into a "joint agency" has been endowed with a right to discriminate which it otherwise would not possess.

Appellants may not reasonably complain if the joint agency created by them for the purpose of performing terminal services is required to provide without discrimination reasonable, proper, and equal facilities to all carriers requesting of it the performance of such services. The fiction of a separate corporate entity will be disregarded whenever it is insisted upon as a protection to an illegal transaction. In re Rieger, Kapner & Altmark, 157 Fed. 609; Miller & Lux v. East Side Canal & Irrigation Co., 211 U. S. 293; Lehigh Mining & Mfg. Co. v. Kelley, 160 U. S. 327; Gas Co. v. West, 50 Iowa 16; Booth v. Bunce, 33 N. Y. 139.

The order of the Commission has not required the dissolution of the Nashville Terminals, nor has it exacted that the Tennessee Central be admitted to that organization. It has merely required that appellants place the Tennessee Central on an equal footing with the Louisville Company and the Nashville Company in the matter of the interchange of traffic at Nashville.

That appellants, through their common agency, may not deny to the Tennessee Central a privilege which they individually might be required to give that carrier is submitted as so obvious as not to require elaboration.

THE NASHVILLE TERMINALS, IF GIVEN THE EFFECT APPELLANTS CLAIM FOR IT, WOULD CONSTITUTE A MONOPOLY; AND THE COMMISSION PROPERLY REFUSED TO GIVE IT THAT EFFECT.

The Nashville Terminals insists upon its right to refuse to switch for the Tennessee Central any traffic which might have come in or which might go out over the line of either of its principals. Yet, in the absence of the joint arrangement, neither of those principals might lawfully refuse to switch for the Tennessee Central merely because the traffic offered might have come in or might go out over its own lines. The Tennessee Central, therefore, at points served only by it and one of the other carriers might, in the absence of the joint arrangement, compete on equal terms with those carriers for traffic destined to Nashville. Here, then, is a clear suppression of competition, a flagrant discrimination against competitive traffic. That discrimination was alleged in the complaint before the Commission to have resulted from the concerted action of appellants.

Whether or not each of the appellants individually might lawfully refuse to switch competitive traffic for the Tennessee Central, if neither of those carriers were interchanging traffic with the other, was a question not considered by the Commission. But the Commission having found as a matter of fact that appellants were switching for each other both competitive and noncompetitive traffic upon

equal terms, that they were jointly treating as competitive traffic any which might have come in or which might go out over the line of either of them, and that they were refusing to interchange like traffic with the Tennessee Central, was justified in concluding that appellants were combining against such competitive traffic coming in or going out over the lines of that carrier.

VI.

THE LIMITATION UPON THE POWER OF THE COMMISSION IN ESTABLISHING THROUGH ROUTES, UNDER SECTION 15, IS NOT APPLICABLE IN THIS CASE.

Appellants claim that the order in controversy requires them to short-haul their own lines on all competitive traffice, in violation of the provisions of section 15. This contention was made before the Commission, and the Commission said:

This provision, however, relates exclusively to the power of the Commission to establish through routes, and, since orders against discrimination by carriers between their connections in the matter of through routes are enforceable without the establishment of through routes by the Commission, does not apply to the provisions of section 3 either expressly or by necessary implication. Defendants short-haul their respective lines in favor of each other, and in our opinion can not under the act as now amended refuse to interchange traffic with the Tennessee Central solely on the ground that they would thereby short-haul their own lines. Record, Vol. II, p. 582.

This contention was also made in this court upon the same state of facts in *L. & N. R. Co. v. United States*, 238 U. S. 1, and this court distinctly sustained the view taken by the Commission, as appears from the extracts from the opinion quoted.

This is not a proceeding involving the establishing of a through route. The issue here, as stated by counsel, is one of *discrimination only*. And this court clearly decided that the provision in section 15 did not apply in such a case.

VII.

THE COMMISSION HAS POWER TO REQUIRE THE REMOVAL OF DISCRIMINATION IN WHATSOEVER GUISE IT MAY APPEAR.

It is conceded that the Nashville Terminals does discriminate against the Tennessee Central and its shippers in favor of appellants, but it is urged that such discrimination is not undue or unreasonable; that the Nashville Terminals, having been created by appellants, has the right to favor them to the detriment of the Tennessee Central.

Congress must be presumed, however, to have realized that carriers would resort to every conceivable device to effect discrimination in evasion of the act; and its intention that substance rather than form should control the application of the statute is evident from its use in the act of such phrases as "directly or indirectly," "in any respect whatsoever" and "any device whatever."

As said by Mr. Justice Hughes, speaking for this court in the *Shreveport Case*, 234 U. S. 342, 356:

It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach.

Appellants admit that the Commission would have the power to require the abatement of any discrimination resulting from their refusal individually to extend to the Tennessee Central a privilege which they individually extended to each other. It is therefore difficult to understand the theory upon which they insist that the Commission is powerless to abate a correspondingly discriminative practice, merely because the discrimination is effected by their common agent.

It is a cardinal principle of the law that an act directly forbidden may not be indirectly accomplished.

The difference between the discrimination which the Commission has here attempted to abate and that which appellants concede it might abate is a difference merely in degree and form. The discrimination here accomplished through the instrumentality of the Nashville Terminals is no less a violation of the law than would be the same discrimination if effected individually by the carriers parties to the joint arrangement.

It is further to be noted that the discrimination required in this case to be removed is not merely a discrimination against the Tennessee Central, and against competitive traffic as in favor of non-competitive traffic, but a discrimination against the shippers served by the Tennessee Central and against the City of Nashville. *Michigan Central R. Co. v. Michigan Railroad Commission*, 236 U. S. 615, 632.

VIII.

THE ORDER OF THE COMMISSION DOES NOT REQUIRE APPELLANTS TO GIVE THE USE OF THEIR TRACKS OR TERMINAL FACILITIES TO ANOTHER CARRIER ENGAGED IN LIKE BUSINESS.

In Pennsylvania Co. v. United States, 236 U. S. 351, this court held that an order of the Commission requiring the removal of discrimination in the interchange and switching practices of the Pennsylvania Company, at New Castle, Pa., was not an appropriation of the terminals of that carrier. Mr. Justice Day, speaking for the court, in that case, pp. 368-369, said:

In the present case we think there is no requirement in the order of the Commission amounting to a compulsory taking of the use of the terminals of the Pennsylvania Company by another road within the inhibition of this clause of section 3. The order gives the Rochester road no right to run its cars over the terminals of the Pennsylvania Company or to use or occupy its stations or depots for purposes of its own. There is no requirement that the Rochester Company be permitted to store its cars in

the yards of the Pennsylvania Company or to make use of its freight houses or other facilities, but simply that the Pennsylvania Company receive and transport the cars of the Rochester Company over its terminals at New Castle in the same manner and with the same facilities that it affords to other railroads connecting with the Pennsylvania Railroad at the same point.

The only material difference between the New Castle Switching Case and the case at bar is that the latter involves a contract between appellants which, it is claimed, gives to each of them trackage rights over the terminal lines of the other, whereas no such contract appeared of record in the New Castle Switching Case. But in Louisville & N. R. Co. v. United States, 238 U. S. 1, this court held that the joint arrangement between appellants did not take the case out of the principle announced in the New Castle Switching Case, and that the order of the Commission there under consideration, which was substantially the same as the order here involved, did not require appellants to give the use of their terminals to the Tennessee Central.

IX

THE LANGUAGE OF THE THIRD PARAGRAPH OF THE COMMISSION'S ORDER, WHEN READ IN CONNECTION WITH WHAT PRECEDES IT, IS CLEAR, AND HAS RECEIVED INTERPRETATION BY THE APPELLANTS AND BY THE COMMISSION.

The third paragraph of the Commission's order requires the appellants to put in—

* * * rates and charges which shall not be different than they contemporane-

ously maintain with respect to similar shipments to and from their respective tracks in said city [Nashville], as said relation is found by the Commission in its said report to be nondiscriminatory.

It is stated in the brief for the Nashville Company, page 35, that—

It is believed that the invalidity of the order will appear from the impossibility of complying with it without destroying the arrangement between the two companies at Nashville.

The rates which the order requires are rates which avoid the discrimination condemned. It does not have any reference to the amount of the rate to be charged the Tennessee Central, but in effect demands that the rates charged shall not discriminate between competitive and noncompetitive traffic which, aside from this circumstance, is alike.

The appellants had no difficulty in so construing this order. They put the same into effect by a rate of \$7.50 per car for switching both competitive and noncompetitive traffic at Nashville. This rate was suspended and its reasonableness was inquired into, upon full hearing, by the Commission. This case was decided June 30, 1916. Nashville Switching, 40 I. C. C., 474. In that opinion, the Commission said at page 476:

The Nashville Terminals' proposed charge of \$7.50 for both competitive and noncompetitive traffic would comply with our order in the City of Nashville Case, and the principal question presented is whether it would be reasonable.

The Commission considered a large amount of testimony and found the charge unreasonable, and fixed a maximum rate of \$5 per car.

The part of the order which counsel for appellants claim is "rather peculiar language" and "not quite clear" was perfectly understood by the appellants when they put in their rate of \$7.50 to comply with the order, and the Commission construed this to be a compliance with the order, leaving only the question of the reasonableness of the rate to be determined.

CONCLUSION.

The evidence before the Commission in this case showed clearly that the Louisville Company and the Nashville Company were interchanging traffic for each other over the Nashville Terminals without distinguishing between competitive and non-competitive traffic, while at the same time refusing to perform a similar service upon like conditions for the Tennessee Central, and that they were thereby discriminating against the Tennessee Central, the shippers served by that carrier, and the City of Nashville. The findings of the Commission were in accordance with and fully supported by this evidence.

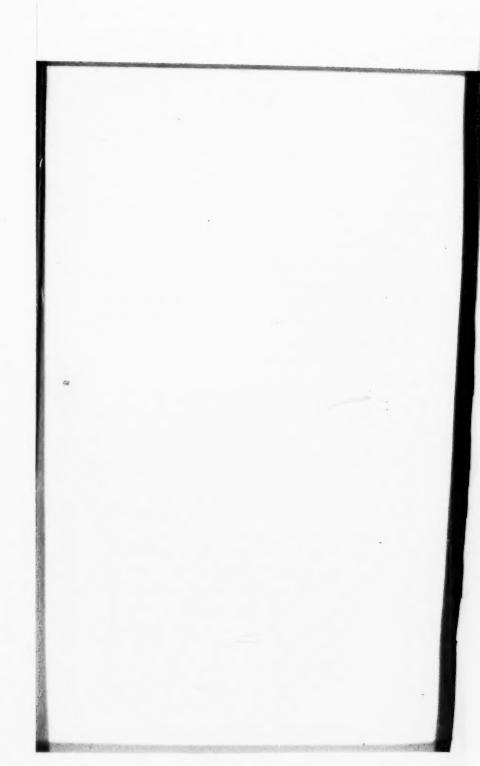
The order here under consideration merely requires appellants to cease and desist from the dis-

crimination which the Commission found as a matter of fact to exist. Louisville & N. R. Co. v. United States, 238 U. S. 1. In other words, so long as the Louisville Company and the Nashville Company shall elect to switch for each other and for the shippers served by both, without discrimination between competitive and noncompetitive traffic, the Commission properly may and should require that they shall perform a similar service under like conditions for the Tennessee Central and its shippers. That such a requirement is within the power of the Commission is clearly sustained by the decision of this court in Pennsylvania Co. v. United States, 236 U. S. 351.

It is therefore respectfully submitted that the judgment of the District Court should be affirmed.

JOSEPH W. FOLK, CHARLES W. NEEDHAM.

Counsel for the Interstate Commerce Commission.



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LOUISVILLE & NASHVILLE RAILROAD COM-PANY ET AL. v. UNITED STATES OF AMERICA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF TENNESSEE.

No. 200. Argued October 13, 16, 1916.—Decided December 4, 1916.

Under circumstances which induce the court to say that there could have been no purpose to discriminate against the Tennessee Central, the two appellant railroad companies planned and matured an arrangement for the interchange of traffic at Nashville which, stated generally, took the following form, viz: The terminal, connecting their main lines and consisting of tracks, yards, depots and other railroad property, owned in part by the appellant railroad companies in severalty, and in part held as to title by appellant Terminal Company, but leased by it to them in joint tenure, was placed under the management of an unincorporated organization called the "Nashville Terminals," along with additional connecting trackage contributed by the two railroads from their respective main and side tracks. The "Nashville Terminals," under control of the two appellant railroad companies, maintained and operated this collective property and thus served, within the switching limits so constituted, to interchange the traffic of the two roads at Nashville. The total expense of maintenance and operation was apportioned between the two constituent railroad companies on the basis of the total number of cars and locomotives handled for each, and no switching charges were made against either. The appellant Terminal Company was, in origin, a creature of the other two appellants; the property which it held in and about the terminal was obtained directly or indirectly through their financial aid, and the Louisville & Nashville owned all its stock, as well as 71% of the stock of the Nashville & Chattanooga. The Interstate Commerce Commission directed appellants to abstain from refusing to switch interstate competitive traffic for the Tennessee Central on the same terms as noncompetitive, while exchanging both kinds on the same terms for each other, and ordered them to establish rates for the switching of all interstate traffic for the Tennessee Central the same as they contemporaneously maintained between themselves.

242 U. S. Argument for Louisville & Nashville Railroad Co.

Held, under these circumstances, as more fully developed in the opinion:

(1) That for all practical purposes the effect of the arrangement was to make the two appellant railroad companies the joint owners of the terminal.

(2) That by § 3 of the Interstate Commerce Act they were as such joint owners protected in the same degree as would be an owner in severalty from being required to give the use of their terminal facilities to another carrier engaged in like business.

(3) That their mere refusal to switch for the Tennessee Central would

not be an unlawful discrimination.

(4) That the method of switching through a single agency, as described, did not involve unlawful discrimination against that railroad.

(5) That, consequently, the order of the Commission was erroneous

and must be enjoined.

(6) But that appellants might not lawfully discriminate between competitive and noncompetitive goods; and, so long as they received the latter the Commission could require them to receive the former upon being paid reasonable compensation, taking into account their pecuniary outlay on the terminal.

227 Fed. Rep. 258; id. 273, reversed.

THE case is stated in the opinion.

Mr. Edward S. Jouett, with whom Mr. Henry L. Stone. Mr. W. A. Colston and Mr. Jnc. B. Keeble were on the briefs, for the Louisville & Nashville Railroad Company:

Each plaintiff pays for, and through the joint agency performs, the service incident to switching its car between the point of interchange and the industry, in the case of every car which is hauled inbound or outbound over its tracks. Accordingly neither switches for the other nor discriminates against the Tennessee Central in refusing to switch for it.

If the arrangement should be held to constitute any sort of switching service, rendered by one of the constituent companies to the other, it would not constitute an unjust or undue discrimination for the reason that the circumstances and conditions under which the service is rendered are totally dissimilar from those necessarily existing in

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connection with the handling of cars for the Tennessee Central. In pursuing its discrimination theory the Commission is led into declaring, and logically so, that the plaintiffs must switch for the Tennessee Central at confiscatory rates, that is for cost, without any return on the property used. This is illegal because the constituent companies would get nothing to equalize the interest or return on their property, and nothing for overhead expenses. The necessity for the charge being indefinite—the cost of service—is another demonstration of the impracticability, in addition to the illegality, of the Commission's theory of discrimination.

Certainly no reason or authority can be found for allowing the Commission to substitute something else for the facility which a carrier gives to one and refuses to give to another. If the joint arrangement of plaintiffs be a facility, the denial of which to the Tennessee Central constitutes a discrimination under § 3 of the Commerce Act, then the way to remove the discrimination is to order plaintiffs to discontinue the arrangement or else to admit the Tennessee Central to it upon proper terms. But there are two things, either of which will prevent the Commission from validly making this latter requirement: (1) a dissimilarity of conditions and circumstances, in which case there is no unjust or undue discrimination; or (2) the prohibition of some law. While either of these two barriers is sufficient for us, it happens that both exist in this case. The dissimilarity in conditions is fully established, and hence the Commission's finding of discrimination as a fact is unsupported by substantial evidence. The proviso at the end of § 3 is the law that conclusively forbids the Commission to order plaintiffs to admit the Tennessee Central to the physical use of their terminal tracks.

This proviso is an express limitation imposed upon the Commission's power in the matter of ordering equal facil242 U.S. Argument for Louisville & Nashville Railroad Co.

ities. It must always stop short of requiring one road to afford another road physical access to its "tracks and terminal facilities." In other words, the right of a railroad to sell to another railroad (whether for money or other trackage rights or other thing) the physical use of its road, that is trackage rights, and that without incurring a similar obligation to other railroads, is thereby ratified and preserved. K. & I. Bridge Co. v. L. & N. R. R. Co., 37 Fed. Rep. 567; Oregon Short Line & U. N. Ry. Co. v. Northern Pacific Ry. Co., 51 Fed. Rep. 465 (affirmed by the C. C. A. in 61 Fed. Rep.); Little Rock & M. R. Co. v. St. Louis, I. M. & S. Ry. Co., 59 Fed. Rep. 400.

This proviso to § 3, construed in the foregoing cases, has never been amended. We are aware that it is a mooted question whether the proviso serves to prevent the Commission ordering switching, independent of the question of discrimination, but no such question is here presented. This is a discrimination case, that being the sole ground of the Commission's order. Besides, the Commission decided in the Louisville Switching Case, 40 I. C. C. 679, that it had no power to order switching, except in the case of discrimination; and in that case the discriminatory act was switching, not granting trackage rights.

The joint arrangement of plaintiffs is not a "device" to evade the Act to Regulate Commerce.

This court can review the Commission's order where its ultimate conclusion from undisputed facts is wrong. Interstate Commerce Commission v. L. & N. R. R. Co., 227 U. S. 88, 91.

The decision in the Nashville Coal Case (L. & N. R. R. Co. v. United States, 238 U. S. 1) does not affect this case.

This court has distinctly declared the right of two companies to unite their terminals for their "common but exclusive use." United States v. Terminal Railroad Association of St. Louis, 224 U. S. 383.

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Mr. Claude Waller, Mr. R. Walton Moore and Mr. Frank W. Gwathmey filed a brief for Nashville, Chatta-

nooga & St. Louis Railway:

These appellants are not interchanging traffic; each is handling its own traffic and delivering it to each industry within the terminal district through a joint agent to be sure, but at its own expense; neither has switching charges against the other; no switching charge has been filed with the Interstate Commerce Commission; and the plan of operation does not bear the slightest relationship to a reciprocal switching arrangement, in which case one road performs a service for another at its own expense, on its own track, through its own switching crew for a switching charge which is either paid by the shipper or consignee or by the carrier for which the switching is done. The case does not come within the principle announced in Pennsylvania Co. v. United States, 236 U.S. 351, that where a railroad company has opened its terminals to one carrier it is unjustly discriminatory not to open its terminals on the same terms to another carrier similarly situated.

The arrangement is essentially the same as both roads acquiring and operating jointly the entire terminals, or the same as each having exchanged trackage rights with the other. Such an arrangement is not contrary to law, nor is it unjustly discriminatory towards a third railroad to deny it participation in such an arrangement.

There is no illegality in the two railroad companies acquiring and operating jointly, at a given point, terminal facilities for their common, but exclusive, use. *United States* v. *Terminal R. R. Association of St. Louis*, 224 U. S.

383, 405.

The amendment to the Interstate Commerce Act does not prevent a railroad company from giving trackage rights to one road and denying it to another. Pennsylvania Co. v. United States, supra.

If the arrangement is a legal one, not prohibited by any

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of the provisions of the Act to Regulate Commerce, then there is no unjust discrimination in the sense of § 3 of the Act.

The argument then dealt with the impossibility of complying with the order without destroying the terminal arrangement entirely, and affirmed that the circumstances surrounding the Tennessee Central Company are entirely dissimilar to those existing between appellants.

Mr. Assistant Attorney General Underwood for the United States:

This court has not only (a) settled the principles involved (*Pennsylvania Company* v. *United States*, 236 U. S. 351), but has also (b) applied those principles to the facts presented by this record. *Louisville & Nashville Railroad Company* v. *United States*, 238 U. S. 1.

- (a) In the former case, it is again announced, with citation of numerous cases, that discrimination is a question of fact for the determination of the Commission (p. 361); that transportation similar to that involved in this case comes within § 3 of the Act to Regulate Commerce as amended (pp. 363-364); that to require such interchange is not a taking of property without due process of law (p. 369), and does not require the carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business (pp. 366, 369).
- (b) In the case of the Louisville & Nashville Railroad Company v. United States, 238 U. S. 1, the record and the issues before the court were substantially the same as presented in this case, and the judgment there is decisive here. It is true that in the former case only the reports of the Commission were before this court, while the record now contains both the reports of the Commission and the evidence taken before it. Nevertheless, the evidence be-



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fore the Commission and its findings of fact were substantially the same in both cases. Not only was the issue now advanced made and insisted upon by appellants in the former case, but, as will be seen from an examination of the record, was given careful consideration by the Commission, the District Court, and this court.

The respective interests of appellants in the terminal property the joint agency and its method of operation were described in detail in both the report of the Commission and the decision of the District Court. Louisville & Nashville Railroad Company v. United States, 216 Fed. Rep. 672, 683.

This court adopted the statements of facts of the Commission and the District Court, using them as the basis

of its decision.

Mr. Charles W. Needham, with whom Mr. Joseph W. Folk was on the brief, for the Interstate Commerce Commission:

The Commission's findings of fact, if based upon substantial evidence, are conclusive. The question of unjust discrimination, as presented in this case, is one of fact, even though the evidence may be undisputed. *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314; *Pennsylvania Co.* v. *United States*, 236 U. S. 351.

Section 15 of the act, as amended, empowers the Commission to deal with preferential and discriminatory regulations of carriers, as well as with rates. *Int. Com. Com.* v. *Illinois Central R. Co.*, 215 U. S. 452.

The finding of the Commission that the Louisville Company and the Nashville Company were in effect switching for each other was supported by substantial evidence.

It is apparent that, while the Louisville Company and the Nashville Company, after the inauguration of the joint arrangement, continued as theretofore to perform a 242 U.S. Argument for the Interstate Commerce Commission.

switching service for each other, that service, after the establishment of the Nashville Terminals, was rendered by the common agency of both, instead of individually by each for the other, as previously.

Appellants contend that the Nashville Terminals acts in every instance as the agent of the carrier performing the line service, and cite, in support of that contention, the practice observed by the Terminals in the apportionment of its operating expenses. But if the joint agency did not exist, the carrier switching the traffic to or from the industry on its line would bill that service against the carrier making the road haul. In other words, the line carrier merely pays its proportion of the switching service performed by the Nashville Terminals instead of the switching charge which it otherwise would pay to the carrier performing that service. The joint agent, then, must be held to act for the carrier which would perform the switching service in the absence of the joint arrangement.

The finding of the Commission that the Louisville Company and the Nashville Company were in effect switching for each other was supported by the decision of this court in Louisville & N. R. Co. v. United States, 238 U. S. 1, 17–20. The material facts of record in the two cases are essentially the same, although more in detail in this record. But so far as the question here involved is concerned the Commission says that it "discloses nothing to change our former conclusion."

Appellants virtually admit that if they were individually switching for each other, and at the same time and under like conditions refusing to perform a similar service for the Tennessee Central, their discrimination against the latter carrier would constitute a violation of the act. How, then, can they justify such a discrimination when effected by their common agent?

Again, if the Nashville Terminals were in fact a ter-

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minal company, as that expression is generally understood, it could scarcely deny that its exclusion of the Tennessee Central from privileges extended to the Louisville Company and the Nashville Company would constitute an unlawful discrimination. St. Louis, S. & P. R. Co. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 235–236.

Appellants may not reasonably complain if the joint agency created by them for the purpose of performing terminal services is required to provide without discrimination reasonable, proper, and equal facilities to all carriers requesting of it the performance of such services. The fiction of a separate corporate entity will be disregarded whenever it is insisted upon as a protection to an illegal transaction. In re Rieger, Kapner & Allmark, 157 Fed. Rep. 609; Miller & Lux v. East Side Canal & Irrigation Co., 211 U. S. 293; Lehigh Mining & Mfg. Co. v. Kelley, 160 U. S. 327; Gas Co. v. West, 50 Iowa, 16; Booth v. Bunce, 33 N. Y. 139.

The Nashville Terminals, if given the effect appellants claim for it, would constitute a monopoly; and the Com-

mission properly refused to give it that effect.

This is not a proceeding involving the establishing of a through route. The issue here is one of discrimination only. And this court clearly decided that the provision in § 15 did not apply in such a case. L. & N. R. Co. v. United States, 238 U. S. 1.

The Commission has power to require the removal of discrimination in whatsoever guise it may appear.

The discrimination is also a discrimination against the shippers served by the Tennessee Central and against the City of Nashville. *Michigan Central R. Co.* v. *Michigan Railroad Commission*, 256 U. S. 615, 632.

In Louisville & N. R. Co. v. United States, 238 U. S. 1, this court held that the joint arrangement between appellants did not take the case out of the principle announced in

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Pennsylvania Co. v. United States, 236 U. S. 351, and that the order of the Commission there under consideration, which was substantially the same as the order here involved, did not require appellants to give the use of their terminals to the Tennessee Central.

Mr. Justice Holmes delivered the opinion of the court.

This is an appeal from a decree, made by three judges sitting in the District Court, which denied a preliminary injunction against the enforcement of an order of the Interstate Commerce Commission and dismissed the appellants' petition. 227 Fed. Rep. 258, id. 273. See 33 I. C. C. 76, for the report of the Interstate Commerce Commission. The order complained of required the appellants, the Louisville & Nashville Railroad Company, the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Terminal Company to desist and abstain "from maintaining a practice whereby they refuse to switch interstate competitive traffic to and from the tracks of the Tennessee Central Railroad Company at Nashville, Tenn., on the same terms as interstate noncompetitive traffic, while interchanging both kinds of said traffic on the same terms with each other, as said practice is found by the Commission in its said report to be unjustly discriminatory." It was further ordered, that "The Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Terminal Company be, and they are hereby notified and required to establish, on or before May 1, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the switching of interstate traffic to and from the

tracks of the Tennessee Central Railroad Company at said Nashville, rates and charges which shall not be different than they contemporaneously maintain with respect to similar shipments to and from their respective tracks in said city, as said relation is found by the Commission in its said report to be nondiscriminatory." The appellants contend as matter of law that the relations between them exclude any charge of discrimination that is based only upon a refusal to extend to the Tennessee Central road the advantages that they enjoy.

The order is based upon discrimination and is limited by the duration of the interchange between the appellants found to be discriminatory, and the question argued by the appellants is the only question in the case. Therefore it is necessary to consider relations between the appealing railroads that were left on one side in Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1, 18.

The Louisville & Nashville traverses Nashville from north to south, the Nashville & Chattanooga from west to southeast, the Tennessee Central from northwest to east. They all are competitors for Nashville traffic. In 1872, contemplating a possible Union Station, the Louisville & Nashville acquired trackage rights from the Nashville & Chattanooga that connected its northern and southern terminals in the city (previously separate), and the terminal of the Nashville & Chattanooga. It now owns seventy-one per cent. of the stock of the latter. In 1893 these two roads caused the appeliant Terminal Company to be organized under the general laws of Tennessee, with the right to let its property. The Louisville & Nashville owns all the stock of this company. In 1896 the two roads respectively let to the Terminal Company their several properties in the neighborhood of the original depot grounds of the Nashville & Chattanooga for 999 years, and shortly afterwards the Terminal made what is termed 242 U.S.

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a lease of the same and subsequently acquired property to the two roads jointly for a like term. It covenanted to construct all necessary passenger and freight buildings. tracks and terminal facilities, the roads to pay annually as rental four per cent. of the actual cost, and to keep the properties in repair. The Terminal Company then made a contract with the city for the construction of a Union Station, the two roads guaranteeing the performance, and the construction was completed in 1900; the tracks connecting with those of the two roads but not with those of the Tennessee Central. The Terminal Company as part of the improvements purchased large additional properties, the two roads advancing the funds, and the company executing a mortgage for three million dollars guaranteed by the roads. \$2,535,000 of the bonds were issued and the proceeds used to repay the roads.

On August 15, 1900, the two roads, at that time being the only two roads entering Nashville, made the arrangement under which they since have operated. They made an unincorporated organization called the Nashville Terminals which was to maintain and operate the property let to the two roads jointly by the Nashville Terminal Company and also 8.10 miles of main track and 23.80 miles of side track contributed by the Louisville & Nashville and 12.15 miles of main and 26.37 miles of side track contributed by the Nashville & Chattanooga. The agreement between the roads provided a board of control consisting of a superintendent and the general managers of the two roads, the superintendent having the immediate control and appointing under officers, &c. expense of maintenance and operation is apportioned monthly between the two roads on the basis of the total number of cars and locomotives handled for each. There is no switching charge to or from locations on tracks of the Nashville terminals within the switching limits on freight from or to Nashville over either road. The Tennessee Central tracks now connect with those of the Nashville & Chattanooga at Shops Junction in the western section of the city, within the switching limits, and with those of the Louisville & Nashville at Vine Hill, outside the switching limits and just outside the city on the south.

It should be added that in December, 1902, a further agreement was made purporting to modify the lease to the railroads jointly by excluding from it the property that came from them respectively, and remitting the roads to their several titles as they stood before the lease, subject only to the mortgage, with some other changes that need not be mentioned. This partial change from joint tenancy, back to several titles does not affect the substantial equality of the contribution of the two roads, and the joint tenure of the considerable property purchased by the Terminal Company was left unchanged.

Another matter that seems immaterial to the case before us is that since the connection between the Tennessee Central and the appellant roads the latter have interchanged noncompetitive traffic with the former, but the Louisville & Nashville has refused to switch competitive traffic and coal except at its local rates and the Nashville & Chattanooga has refused to switch it at all. The switching of coal was dealt with by this court in Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1. But the case now before us is not concerned with the effect of the carriers having thrown the terminals open to many branches of traffic. 238 U.S. 18. It arises only upon the question of the discrimination supposed to arise from the appellants' relations to each other, as we have explained a question grazed but not hit by the decision in 238 U.S. See p. 19.

If the intent of the parties or purpose of the arrangement was material in a case like this, obviously there was none to discriminate against the Tennessee Central road. That 242 U.S.

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road did not enter Nashville when the plan was formed. and the two appellants had a common interest although competitors—an interest that also was public and in which the City of Nashville shared. By § 3 of the Act to Regulate Commerce as it now stands, the Act "shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." Therefore if either carrier owned and used this terminal alone it could not be found to discriminate against the Tennessee Central by merely refusing to switch for it, that is to move a car to or from a final or starting point from or to a point of interchange. We conceive that what is true of one owner would be equally true of two joint owners, and if we are right the question is narrowed to whether that is not for all practical purposes the position in which the appellants stand. They do still hold jointly a considerable portion of the terminals, purchased with their funds. They manage the terminals as a whole and in short deal with them in the same way that they would if their title was joint in every part. Of course they do not own their respective original tracks jointly and it is matter for appreciation that perhaps defies more precise argument whether the change back to a several tenure of those tracks changed the rights of the parties. We cannot see in this modification of the paper title any change material to the point in hand. Neither road is paid for the use of its tracks, but the severally owned and the jointly held are brought into a single whole by substantially equal contributions and are used by each as occasion requires.

The fact principally relied upon to uphold the order of the Commission is that instead of each road doing its own switching over the terminals used in common they switch jointly, and it is said that therefore each is doing for the other a service that it cannot refuse to a third. We cannot believe that the rights to their own terminals reserved by the law are to be defeated by such a distinction. We take it that a several use by the roads for this purpose would open no door to a third road. If the title were strictly joint throughout in the two roads, we can see no ground for prejudice in the adoption of the more economical method of a single agency for both, each paying substantially as it would if it did its own work alone. But, as we have indicated, a large part of the terminals is joint property in substance and the whole is held and used as one concern. What is done seems to us not reciprocal switching but the use of a joint terminal in the natural and practical way. It is objected that upon this view a way is opened to get beyond the reach of the statute and the Commission. But the very meaning of a line in the law is that right and wrong touch each other and that anyone may get as close to the line as he can if he keeps on the right side. And further, the distinction seems pretty plain between a bona fide joint ownership or arrangement so nearly approaching joint ownership as this, and the grant of facilities for the interchange of traffic that should be extended to others on equal terms. The joint outlay of the two roads has produced much more than a switching arrangement, it has produced a common and peculiar interest in the station and tracks even when the latter are not jointly owned. In our opinion the order was not warranted by the law; but in overturning it upon the single point discussed we do so without prejudice to the Commission's making orders to prevent the appellants from discriminating between competitive and noncompetitive goods, so long as they open their doors to the latter, the appellants being entitled to reasonable compensation, taking into account the expense of the terminal that they have built and paid for.

Decree reversed. Injunction to issue, without prejudice to further orders by the Interstate Commerce Commission as stated in the opinion. 242 U. S. PITNEY, DAY, BRANDEIS, and CLARKE, JJ., dissenting.

Mr. Justice Pitney, with whom concurred Mr. Justice Day, Mr. Justice Brandeis, and Mr. Justice Clarke, dissenting.

I am unable to concur in the opinion of the court, and, in view of the far-reaching effect of the decision upon the commercial interests of the country, deem it a duty to set forth the grounds of my dissent.

The Interstate Commerce Commission found as matter of fact (33 I. C. C. 76, 84): "Defendants [the two railroad companies, now appellants] unquestionably interchange traffic with each other and without distinction between competitive and noncompetitive traffic. The cars of both roads are moved over the individually owned terminal tracks of the other to and from industries on the other, and both lines are rendered equally available to industries located exclusively on one. The movement, it is true, is not performed immediately by the road over whose terminal tracks it is performed, but neither is it performed immediately by the road whose cars are moved. It is performed by a joint agent for both roads, and that being so, we are of the opinion that the arrangement is essentially the same as a reciprocal switching arrangement and accordingly constitutes a facility for the interchange of traffic between, and for receiving, forwarding, and delivering property to and from defendants' respective lines, within the meaning of the second paragraph of section 3 of the act. [Interstate Commerce Act.] . can not agree with defendants' contention that they have merely exchanged trackage rights. But even if they have, we think the term 'facility,' as used in section 3 of the act, also includes reciprocal trackage rights over terminal tracks, the consequences and advantages to shippers being identical with those accruing from reciprocal switching arrangements."

The District Court, three judges sitting (227 Fed. Rep.

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258, 269), after careful consideration, reached the following conclusions: "The operation jointly carried on by the Louisville & Nashville and the Nashville & Chattanooga under the Terminals agreement is not a mere exchange of trackage rights to and from industries on their respective lines at Nashville, under which each does all of its own switching at Nashville and neither switches for the other. It is, on the contrary, in substance and effect, an arrangement under which the entire switching service for each railroad over the joint and separately owned tracks is performed jointly by both, operating as principals through the Terminals as their joint agent, each railroad, as one of such joint principals, hence performing through such agency switching service for both itself and the other railroad. . . And, viewed in its fundamental aspect, and considered with reference to its ultimate effect, we entirely concur in the conclusion of the Commission that such joint switching operation 'is essentially the same as a reciprocal switching arrangement,' constituting a facility for the interchange of traffic between the lines of the two railroads, within the meaning of the second paragraph of section 3 of the Interstate Commerce Act. That each railroad does not separately switch for the other, but that such switching operations are carried on jointly, is not, in our opinion, material. If it were, all reciprocal switching operations carried on by two railroads at any connecting point of several carriers could be easily put beyond the reach of the act, and its remedial purpose defeated, by the simple device of employing a joint agency to do such reciprocal switching. The controlling test of the statute, however, lies in the nature of the work done, rather than in the particular device employed or the names applied to those engaged in it."

With these views I agree. Elaborate argument is made in behalf of appellants in the effort to show that the method of operating the Nashville Terminals is not "re242 U. S. PITNEY, DAY, BRANDEIS, and CLARKE, JJ., dissenting.

ciprocal switching" within a certain narrow definition of that term. This is an immaterial point; the real question being whether it constitutes a facility for the interchange of traffic between the respective lines of appellants, and for the receiving, forwarding and delivering of property between connecting lines, within the meaning of § 3 of the Interstate Commerce Act (c. 104; 24 Stat. 380), so that it must be rendered to the patrons of the Tennessee Central upon equal terms with those of the Louisville & Nashville and the Nashville & Chattanooga. I cannot doubt that it bears this character.

The section reads as follows: "Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

"Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

It is clear, I think, that in the second paragraph of this section the word "facilities" is employed in two meanings. Where it first occurs, it means those acts or operations that facilitate or render easy the interchange of traffic:

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while, in the final clause, "to give the use of its tracks or terminal facilities," the words "terminal facilities" are employed in a figurative sense and as equivalent to "terminal properties." This is obvious from the association together of tracks and terminal facilities as things subject to use. And the same words are used in the same sense in the 1906 amendment to § 1 of the Act (c. 3591; 34 Stat. 584), by which the definition of the term "railroad" was expanded so as to include "all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein."

There is nothing in the order of the Commission now under review that requires appellants or either of them, or their agency, the Nashville Terminals, to give the use of tracks or terminal facilities to the Tennessee Central, either physically or in any other sense, within the meaning of the final clause of § 3. It requires them merely to interchange interstate competitive traffic to and from the tracks of the Tennessee Central on the same terms as interstate noncompetitive traffic so long as they interchange both kinds of traffic with each other on the same terms; and also to establish and apply to the switching of interstate traffic to and from the Tennessee Central rates and charges not different from those that they contemporaneously maintain with respect to similar shipments as between themselves. Undoubtedly the expenditures made by appellants in the construction of the joint terminal property, so far as that property is used in interchange switching, is an element to be taken into consideration in fixing the amount of the switching charges. And the same is true with respect to the value of the separately owned tracks of appellants, so far as necessarily used in mutual interchanges.

The practice of the Louisville & Nashville and the Nashville & Chattanooga in refusing to interchange competi-

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tive on the same terms as noncompetitive traffic with the Tennessee Central, while interchanging both kinds of traffic as between themselves, was found by the Commission to be unduly discriminatory, there being no substantial difference in the conditions of the interchange, nor any increased cost of interchanging competitive as compared with noncompetitive traffic.

The tracks included in the joint terminal arrangement of appellants include 8.10 miles of main and 23.80 miles of side tracks separately owned by the Louisville & Nashville, 12.15 miles of main and 26.37 miles of side tracks separately owned by the Nashville & Chattanooga, and some yard tracks owned by the Louisville & Nashville Terminal Company, whose entire stock is owned by the Louisville & Nashville R. R. Co. It may be conceded that by virtue of the lease from the Terminal Company to the appellant railroads, even as modified in December, 1902, there remains in some sense a joint tenure of the property of the Terminal Company. But, in my view, the question of the ownership of the property is entirely aside from the real point. The discrimination charged and found by the Commission is not so much in the use of terminal property as in the performance of interchange services; and for such discrimination a community of interest in the property affords neither justification nor excuse.

So far as the non-discriminatory performance of those services requires that cars from the Tennessee Central shall be admitted to the terminal tracks of the Louisville & Nashville and the Nashville & Chattanooga and to tracks in which these companies have a joint interest, this is so only because appellants have, as between themselves, and also as regards traffic from the Tennessee Central, thrown their terminals open to the public use. The argument for appellants rests upon the essential fallacy that the terminal facilities are, in an absolute sense, and for all purposes, private property. But they, like all

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other parts of the railroad line, are, with respect to their use, devoted to the benefit of the public. And the final clause of § 3, while it protects each carrier to a certain extent in the separate use of its terminal property, does so not otherwise than it protects its particular use of the main line of railroad. "Tracks" are mentioned together with "terminal facilities," and the same rule is applied to both. The fact that a carrier owns its own terminals is no more an excuse for discriminatory treatment of its patrons with respect to services performed therein than its ownership of the main line is an excuse for discrimination with respect to transportation thereon.

It is said that if either of the appellants were the sole owner of the terminal properties in question and used them alone, it could not be deemed to discriminate against the Tennessee Central because of a mere refusal to switch for it in the interchange of traffic. Of course if it refused all connecting carriers alike it could not be held for discrimination. But whether it would be at liberty to refuse to switch for the Tennessee Central would depend upon circumstances; for instance, upon whether the Interstate Commerce Commission, pursuant to its authority under § 15 of the Act as amended in 1910 (c. 309; 36 Stat. 552), should establish the two lines as a through route, or (without that) should determine upon adequate evidence that the refusal of switching privileges was a failure to afford reasonable and proper facilities for the interchange of traffic between the connecting lines under § 3. Car interchange between connecting lines was made by the 1910 amendment of § 1 of the Act a positive duty on the part of the carrier, even without action by the Commission. 36 Stat. 545.

I deem it a most material fact that the appellants already interchange noncompetitive traffic with the Tennessee Central, upon terms like those upon which they interchange both competitive and noncompetitive traffic

between themselves. So far as their method of doing this amounts to an interchange of trackage rights they have by their voluntary action thrown open the use of their terminals to all branches of traffic, excepting so far as they discriminate against competitive traffic over the Tennessee Central. Not only so, but the Commission has expressly found (33 I. C. C. 82) that the Louisville & Nashville will switch competitive coal and other competitive traffic to and from the Tennessee Central, the interchange being usually effected at Shops Junction and over the rails of the Nashville & Chattanooga. But the Louisville & Nashville insists upon charging local rates as if for transportation between Nashville and Overton, Tennessee, which amount to from \$12 to \$36 per car, and are therefore in effect prohibitory. For a time the Nashville & Chattanooga in like manner offered to perform the same switching service to and from the Tennessee Central at its local rates, and published a terminal tariff December 14, 1913, expressly providing that such local rates would apply to competitive traffic from and destined to the Tennessee Central. This, however, was revoked shortly after the complaint in the present case was filed. There is here a very plain discrimination, found by the Commission to be an undue discrimination, not merely against the Tennessee Central but against a "particular description of traffic," which is distinctly prohibited by § 3. The conduct of appellants is quite analogous to the making of a discrimination in the charge for carriage not because of any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere basis of the ownership of the goods; a discrimination condemned by this court in Int. Com. Comm. v. Del., Lack. & Western R. R., 220 U. S. 235, 252.

The present system of interchanging traffic between appellants was established in August, 1900, a year or two before the line of the Tennessee Central was constructed PITNEY, DAY, BRANDEIS, and CLARKE, JJ., dissenting. 242 U.S.

into Nashville. Emphasis was laid upon this, in argument, as refuting the suggestion that the arrangement could be deemed a "device" to avoid the discrimination clause of § 3 of the Interstate Commerce Act. The findings of the Commission show, however (33 I. C. C. 81), that when the Tennessee Central entered Nashville it was only after strong opposition from the Louisville & Nashville; and (p. 79) that prior to the year 1898 the people of Nashville had become desirous of better terminal facilities, particularly of a union passenger depot, and an ordinance authorizing a contract to that end between the City and the Terminal Company was proposed, containing a proviso that the terminal facilities should also be available on an equitable basis to railroads which might be built in the future. The present appellants opposed this proviso and an ordinance omitting it was passed, but was vetoed by the mayor on account of the omission. It clearly enough appears, therefore, that the agreement of August, 1900, was made by appellants in view of the probability of some other road entering Nashville thereafter.

But were it otherwise, the result should be the same. The obligation to avoid discrimination and to afford "all reasonable, proper, and equal facilities for the interchange of traffic" is not qualified by any rights of priority. The new road is a servant of the public, equally with the others; subject to the same duty and entitled, for its patrons, to demand reasonable and impartial performance of the reciprocal duty from carriers that preceded it in

the field.

In my opinion the present case is controlled by our decisions in the former case between the same parties (Louis. & Nash. R. R. v. United States, 238 U. S. 1, 18, 19), and the earlier case of Pennsylvania Co. v. United States, 236 U. S. 351, 366 et seq. In these cases many of the same arguments that are here advanced were considered and overruled by the court. The latter case concerned the

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switching of interstate carload traffic between industrial tracks and junction points within the switching limits at New Castle, Pennsylvania. The Pennsylvania Company undertook to sustain a practice of doing such switching at \$2 per car for three railroads while refusing to do it for the Buffalo, Rochester & Pittsburgh, upon the ground of its sole ownership of the terminals and the fact that the three other carriers were in a position, either at New Castle or elsewhere, to offer it reciprocal advantages fully compensatory for the switching done for them in New Castle, whereas the Buffalo, Rochester & Pittsburgh was not in a position to offer similar advantages. The Interstate Commerce Commission (29 I. C. C. 114) overruled this contention, and in this was sustained by the District Court (214 Fed. Rep. 445), and by this court. We there held (236 U.S. 361) that the question what was an undue or unreasonable preference or advantage under § 3 of the Interstate Commerce Act was a question not of law but of fact, and that if the order of the Commission did not exceed its constitutional and statutory authority and was not unsupported by testimony, it could not be set aside by the courts; held (p. 363), that the provisions of § 3, although that section remains unchanged, must be read in connection with the amendments of 1906 and 1910 to other parts of the act, and that by these amendments the facilities for delivering freight at terminals were brought within the definition of transportation to be regulated; and also (pp. 368, 369) that the order did not amount to a compulsory taking of the use of the Pennsylvania tracks by another road within the inhibition of the final clause of § 3; no right being given to the Buffalo road to run its cars over the terminals of the Pennsylvania Company or to use or occupy its stations or depots for purposes of its own.

In the former case between the present parties (Louis. & Nash. R. R. v. United States, 238 U. S. 1), we sustained

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the District Court (216 Fed. Rep. 672) in refusing an injunction to restrain the putting into effect of an order of the Commission (28 I. C. C. 533, 540) requiring appellants to interswitch interstate coal with the Tennessee Central as they did with each other. The findings of the Commission (p. 542) recognized that the terminals were in part jointly owned and in part the separate property of the two appellants. The District Court (216 Fed. Rep. 682, 684) alluded to this fact. And this court (238 U.S. 17, 18, 19, 20) did not ignore that fact but laid it aside as immaterial declaring: "If the carrier, however, does not rest behind that statutory shield [the final clause of § 31 but chooses voluntarily to throw the Terminals open to many branches of traffic, it to that extent makes the Yard public. Having made the Yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of § 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities."

If the decision reached in the present case is adhered to, and remains uncorrected by remedial legislation, it will open a wide door to discriminatory practices repugnant alike to the letter and the spirit of the Act to Regu-

late Commerce.

Mr. Justice Day, Mr Justice Brandels, and Mr. Justice Clarke concur in this dissent.